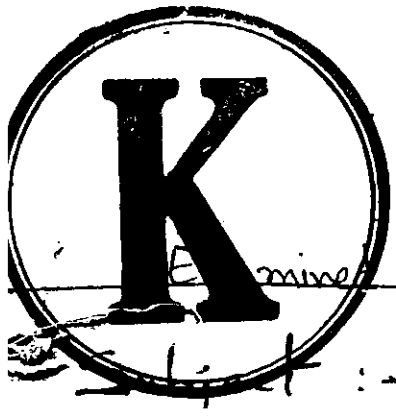
1949

File No. Cr. A.-Bel./49

Legal Department.

A Branch.



Subject :- Criminal appeals in the High Court of Bombay against the orders of the acquittal from Belgaum Dist.

P-92:E

Cr. A. Bel./49

247-A

1 of 6

115

Judgment recorded by the High Court in Criminal Appeal No. 105 of 1949 (BY GOVERNMENT) in the case of Rex. Vs. Nazrat Dadasab No.1 and others.

The Government Pleader for the Government of Bombay.
Mr. V.H.Gumaste, Advocate (appointed), for the accused.

Coram- Bavdekar and Chainani JJ)
12th July 1949

Oral Judgment : (Per Chainani,J)

The facts in this case are simple. On 9.4.48 the police found the three accused and some other persons playing cards with money in an open public ground behind the Belgaum Taluka police station. When the place was raided by the police, all the persons except the three accused ran away. One anna and one pie in cash, 4 white ~~xsimpx~~ 'simpis' and 23 playing cards were found at the place. The accused were then sent up for trial under Section 12 of the Bombay Provention of Gambling Act. All the three accused in their statements admitted that they were then playing cards. They, however, denied that they were playing with money. The learned Magistrate held that the prosecution had not proved that the accused were then gaming. He, therefore, acquitted them. Being dissatisfied with that order, the Government of Bombay have appealed.

The evidence of the panch shows that at the place which was raided one anna and one pie in cash, four white 'simpis' and 23 playing cards were found. These articles would be instruments of gaming, and consequently a presumption would arise under the last paragraph of section 12 that the three accused, who were then present were there for the purpose of gaming. In this case, however, there is other evidence also, which shows that the accused were found playing cards with money. The panch shivalingappa has stated that he was watching the ga

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from a distance, that he saw that the accused had cards in their hands, and that they were playing cards with money. The police jamadar Shankar has also stated that he saw the accused placing money on the ground. To the same effect is the evidence of the Police head constable Durdundi, and the Police sub Inspector Sheshgiri. There is, therefore, sufficient evidence to show that the accused were then gaming. The order passed by the learned Magistrate acquitting them is, therefore, wrong and is set aside.

We accordingly convict the three accused under section 12 of the Bombay Prevention of Gambling Act. It is clear that the stakes with which they were playing were ver small. for only one anna and one pie were then found. In these circumstances, we consider that a small fine would be sufficient to meet the ends of justice. We accordingly sentence each of the accused to pay a fine of Rs.10/- or in default, one week's rigorous imprisonment.

5 HS

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159 C 7

Judgment recorded by the High Court in Criminal Revision Application No.144 of 1948 (By Govt.) in the case of Rex. Vs. Kashim Md. Babasahob Desai.

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The Government Pleader for the Government of the Province of Bombay.

Mr. T.S. Jahagirdar, Advocate (appointed) for the accused

Coram:Bavdekar & Dixit, JJ.

4th August 1948.

Oral Judgment (Per Dixit, J.):

This is an application by the Government of the Province of Bombay for enhancement of the sentence passed upon the accused in respect of an offence of theft of a cycle under section 379 of the Indian Penal Code.

The offence is said to have taken place on the 27th September 1947. The cycle belonged to a man called Surendra, who has a shop at Thalakwadi, and the cycle had been given on hire to the complainant on the 27th September 1947 at about 3 p.m. There is no dispute that this cycle belonged to Surendra. It appears that the complainant had gone to the post office, and while the complainant had gone inside, the cycle was kept outside. The accused took away that cycle and was seen by a police constable Dinkar. His evidence is that he saw the accused going to the post office at about 1 p.m. and sitting there;that he had no cycle, and when he was coming out he found the accused removing the cycle that was kept there by the complainant. Besides the evidence of Dinkar, we have the evidence of Laxman,a panch witness when the cycle was attached. The accused pleaded guilty.He admitted that the cycle had been removed by him without the consent of the

of the complainant. The learned Magistrate imposed upon him a sentence of 15 days rigorous imprisonment, after taking into consideration the period during which he was an under-trial prisoner, which was for a period of 24 or 25 days.

There is no doubt whatever that the sentence imposed is extremely light. The accused seems to be a bidi merchant aged about 45, and it was a daring act of theft. We think that a sentence of six months rigorous will be appropriate on the facts of the case. We, therefore, order that the accused do suffer rigorous imprisonment for a period of six months, and the rule will be made absolute.

RJS/-

11-8-49.

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RJS/-

11-8-49.

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Sessions Case No.19 of 1948.

K i n g

Vs.

1. Basalingappa Balappa Gadvi.
2. Shivayogi Balappa Gadvi.
3. Kallappa Balappa Kalpadi.

J u d g m e n t.

This is a counter case arising out of a fight which occurred on 23rd January 1948 at about 11 a.m. in the field known as Hannerda Akkai Hola, survey no.285 of Masguppi village in Gokak Taluka. In that fight in all three persons met with their death. Two of the dead persons Ashappa Dandin and Yellappa Dandin were of the group on one side and the third person Laxman Ningappa Pujeri was of the opposite group. Sessions Case No.32 of 1948 related to the indictment against ten accused including Shidram Chavrad, one of the three witnesses in this case, for the murder of Ashappa and Yellappa The present case pertains to the charge against the three accused, Basalinga, Shivyogi and Kallappa (who were prosecuti witnesses in that case) for being responsible for the murder of Laxman Ningappa Pujeri. According to the prosecution case, there was a dispute with respect to the ownership and possession of the land Hannerda Akkadi Hola as well as other lands which originally belonged to one Dundappa Malshetty who died on 16.3.1946. The dispute was between accused no.3(who claimed that his son Mahadev was the adopted son of Dundappa Malshetty and asserted to be in possession of the lands belonging to Dundappa) and Nagava, the widow of Dundappa Malshetty, who according to the prosecution case was supporte by the accused in the counter case. In Hannerda Akkadi Hola there were three distinct strips. The central strip, post

no.3 of survey no.285) was claimed to have been leased out by Nagava to her two alleged tenants, witness Shidram Chavrad and deceased Laxman Pujeri, while accused no. 3 contended that the said strip was leased out by him to deceased Ashappa Dandin (who was called Laxman Laxman Dandin) and his brother Yellappa Dandin. As regards the other two side strips each party contende that they were reserved for home farming. While it was Nagava's contention that in those strips the crops were raised for her by witness Shidram Chavrad and deceased Laxman Pujeri under an oral agreement that they would remunerate themselves by taking ha the fodder part of the yield, accused no.3 contended that the crops were raised by his tenants Laxmappa and Ashappa for him. While this dispute was going on, according to the prosecution case, accused no.3 on the morning of 23rd January 1948, went first to the witness Krishnaji Kulkarni , ex.26, and informed him that some people from the village had gone to his Hannerda Akkadi Hola for cutting jowar crop and then, at his advice and accompanied by him went to the Police Patil Shidgauda (ex.4) and complained to him in the same manner. The Police Patil asked him to give a written complaint. As the complaint was being written by witness Gurlingappa Hadvi (ex.45) who was present in the house of the Patil, there was the noise of a row heard. Kallappa left the complaint there and went running in the direction of the field. He was followed by Shidgauda Patil and his brother Shidlingappa along with two Sanadis. As they proceeded, they saw witness Shid Chavrad and Satappa Mirji coming running towards the village along Patgundi road on one side and the three accused on the other through the fields. The party then proceeded to the scene of offence, Hannerda Akkadi Hola, where they found three dead bodies lying there. They were of Ashappa, Yellappa and Laxman Pujari. The Police Patil kept a watch on the dead bodies, returned home, went to the chavdi and wrote the report (ex.5) and

and sent it to the Kuligod Police Station. The offence was registered on the strength of that report by the Police Jamadar Dastigir Jamadar ex.11 who proceeded to the scene of offence the same evening and got an inquest and scene of offence panchanama drawn up. The investigation was thereafter carried out by the Police S.I. who arrived at the village later. Eventually a charge sheet was sent against these three accused for having committed the offence of murder of Laxman Ningappa Pujeri. It is the prosecution case that accused nos 1 and 2 and deceased Ashappa and Yellappa Dandin committed the murder of Laxman Ningapa Pujeri in furtherance of their common intention to murder the tenants of Nagava in assertion of the alleged right of Mahadevappa, the alleged adopted son of Dundappa Kalsheti and that accused 3 abetted them in the commission of this crime by being present at the time of the offence.

2. In defence, accused 1 and 2 have pleased that they were merely watching the fight going on between Ashappa and Yellappa on the one hand and Nagava's partisans (the accused in the counter-case) on the other from their own field Bhavan patti which was closeby, that they were threatened later by some of the assailants and hence they ran away from their field towards the village and took shelter in their own house which was later on subjected to a stone attack by some of their pursuers. Accused no.3 has asserted that he has been falsely involved by the faction of Ningappa Malali (one of the accused in the counter-case) that when he went to the Patil's house to give a complaint against the members of that faction for having gone to uproot his jowar crop in the Hannerda Akkad field and was getting a complaint written by witness Gurlingappa, he heard the noise of a fight in the field and that he ran as far as the field in question and found

only the three dead bodies lying there. He has also stated in defence that he returned to the village and finding the door of his closed, took shelter in one Shidlingappa Dandagi's house and then in his own cattle-shed until the Police arrived in the village. It is his case that the land in dispute was in his possession through his tenants Ashappa and Yellappa Dandin.

3. Accused nos 1 and 2 are brothers whose sister Tayava is given in marriage to accused no.3. All the three accused live in the same house.

4. The following points arise for determination:

1. Is it proved that Laxman Ningappa Pujeri met with a violent death on 23.1.1948 as alleged by the prosecution

2. Is it proved that his death was caused by or in consequence of the acts of the accused nos 1 and 2 ?

3. Is it proved that the accused had the requisite intention or knowlwedge.?

4. Is it proved that accused no.3 abetted accused nos 1 and 2 in the commission of the offence ?

5. Is it proved that accused nos 1 and 2 committed the murder in prosecution of their common intention to muder him ?

6. Did the accused act in exercise of the right of private defence ? If so, what is the offence committed by them ?

5. My findings are : -

1. Yes.

2. Yes.

3. Yes.

4. No.

5. No.

6. Yes; no offence.

Reasons.

6. The fact that Laxman died a violent death on the day

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in question is not in controversy. The inquest panchanama (ex.14) shows the condition in which Laxman's dead body was found on the scene of offence. The medical evidence furnished by the testimony of Doctor Kotbagi (ex.17) with his post-mortem notes (ex.18) relating to Laxman's dead body put beyond doubt the cause of his death. Laxman had sustained as many as four injuries. Three of these were incised wounds and one was an abrasion. Injury no.1 was a horizontal wound 2" x 5/6" varying in depth from 1" to 1½" behind the right shoulder. Injury no.2 was an oblique incised penetarting wound 1½" x ½" going into the thoracic cavity below the innder end of the left collar bone. It was a result of this injury that the heart, lung and the pericardium were cut. The third injury was an incised wound 1" x 1/16" skin deep near the base of the right thumb. According to the Medical Officer, all the four injuries were ante-mortem and injury no.2 in itself was sufficient to cause death in the ordinary course of nature. The other injuries, according to him, were not sufficient to cause death. The first three injuries were in the opinion of the Doctor such as could have been caused by a sharp-edged pointed substance like a spear or a sickle. He is, therefore, of the opinion that injuries nos 1 and 3 might have been caused by an axe. Death according to him, was due to shock and haemorrhage due to injury no.2. In cross-examination, the Medical Officer has admitted that injury no.2 was more probable with a sickle and that injury no.1 was possible either with an axe or with a sickle. In his written opinion (ex.25) sent on the very day of the post-mortem examination, the Medical Officer has stated that death might have been due to shock and haemorrhage as a result of multiple incised wounds causing fracture of the first rib on the left side going deep in thoracic

cavity injuring pericardium, heart, lung and fracutre of the right scapula. Exhs 19 and 20 are the post-mortem notes relating to the other two dead bodies of Ashappa and Yellappa sent to him for post mortem examination from the same scene of offence. Exhs 21 to 26 are the certificates issued in respect of the injuries sustained by accused nos 1, and 2, Nilgangava and Tayava on the same occasion. The oral evidence also is quite clear on the point that Laxman's dead body was found in the same field in which the fight occurred on that day.

7. The question which presents greater difficulty is whether Laxman's death was caused by the accused nos 1 and 2 as alleged by the prosecution. On this point, the prosecution has cited the evidence of three eye-witnesses, Shidram Chavrad (ex.41) Ningappa (ex.50) and Rasulsab Nadaf (ex.52), In addition to the circumstantial evidence tendered by witnesses, Bhimappa Pujeri (ex.53), Gurlingappa (ex.48), Shidgauda Patil (ex.4), Shidlingappa Patil (ex.8) and Krishnaji Kulkarni (ex.26). The evidence of the last four witnesses is cited to show that Kallappa Kalpadi (accused no.3) had gone to Shidgauda (ex. 4), the Police Patil of the village with a complaint that some people from the village had gone armed to the field Hannerda Akkadi Hola for uprooting or cutting the jowar crop standing therein; that as directed by the Police Patil he was getting a complaint written through Gurlingappa Gadvi who was found in the Patil's house and as the complaint was being written the heard the noise of a tumult in the direction of Hannerda Akkadi Hola; that Kallappa (accused no.3) left the complaint there incomplete and ran in the direction of the field; and that he was followed by Shidlingappa and two Sanadis who found three dead bodies of Ashappa, Yellappa and Laxman in the field. With respect to the evidence of these witnesses, I find that they have slightly deviated from trut according as their sympathies lay. I am inclined to believe that witnesses Shidgauda, his brother Shidlingappa and Krishnaji Kulkarni have shown a decisive inclination to favour the side opposite to the present accused. Certain statements have been made by these three witnesses previously either before the Police or before the Com. Magistrate which indicate that accused no.3 had made a complaint

specifically mentioning certain names of some of the persons who composed the group of armed assailants which sallied forth from the village towards the field in dispute. Before the Police Shidgauda Patil has stated that Kallappa came and informed him that Ningappa Malali, Laxman Ningappa Pujeri and others had gone with a cart to cut jowar crop. In the Committal Court also he has stated that Kallappa came to him saying that Shidram, Satu, Rama, Ningappa Shivarayi, Shiddingand Kalloli were going to uproot his jowar crop from his field Hannerda Akkadi Hola. Similarly, before the Police he has made a statement indicating that most of these persons referred to above, ran from the scene of offence towards the village along Patgundi road armed with axes, spears and sickles after they reached the field. It may be noted that in his deposition before this Court, Shidgauda Patil has stated that accused no.3 came to him and merely informed him that some people (without specifying names) had gone to Hannerda Akkadi Hola to uproot the jowar crop. It is admitted by the Police Patil that Kallapa. the maternal uncle of Laxman Bharmapa Pujeri and his brother Kalloli (two of the accused in the counter-case) are his tenants. He has also admitted that he has borrowed Rs 100 from Murgeppa brother of accused 1 and 2, on a pro-note about 10 months ago which loan he has not yet repaid. It is the suggestion of the defence that on this account there was some friction between him and Murgeppa. In the same way, Shidlingappa, the brother of the Patil, has stated before the Police that accused no.3 complained to the Patil saying that Ningappa Malali, Laxman Bharmappa Pujeri and others had gone to the field with a cart to cut jowar crop. In the Committal Court also he has stated that he said that Shidram, Ningappa, Shivarayi and 8 or 9 others went to uproot the jowar crop in the Hannerda Akkadi hola. This witness has also stated before the Police that when they went to the field where the offence took place, Ningappa Malali, Shidlinga Yekundi,

Shidram Chavrad, Yellappa Arer, Kalloli Pujari and Yellappa Lakundi, Satappa Mirje, Shivraul Gorvar went from the field towards the village with axes, sickles and sticks to their land along the Patgundi road. It may be noted that in this Court so far as the accused in the counter-case are concerned, no reference is made by this witness either as having been referred to by accused no.3 in his complaint or as having been seen by him running away from the field with weapons. Both these brothers have, however, stated that as they were proceeding towards the scene of offence, they saw Shidram Chavrad (who is an eye-witness in this case and an accused in the counter-case) and Satappa Mirji (accused in the counter-case) coming running towards the village from the direction of the scene of offence along the Patgundi road and on the other side they saw accused nos 1 and 2 going running towards the village through the fields. Shidgauda Patil has said that he also saw Kallappa going running along with accused nos 1 and 2. In the Committal Court, however, Shidlingappa has stated that he saw 8 or 9 persons going on one side and out of them he recognised Shivram, Shidram, Satteppa and Shidlingappa. So far as Krishnaji Kulkarni is concerned, in the Committal Court, he has stated that accused no.3 told him that 7 or 8 persons from Nagava's party had gone to cut the crops; whereas here he says that ' he merely said to him that 'people were going' to Hanmerda Akkadi Hola for cutting jowar crop. Though Shidlingappa (ex.8) has admitted in the Committal Court that Mahadev is the adopted son of Dundappa, in this Court he denies knowledge of that fact. According to Gurlingappa Gadvi (ex.48), who is a cousin of accused nos 1 and 2, he saw Ningappa Malali, Hamappa Malali, Shidram Chavrad, Shidlingappa, Yellappa, Yellappa, Shivrayi, Kalloli and Yellappa Arer (accused nos 1 to 7 and 9 in the counter case) going with weapons passing by the Patil's house towards the field. He has also said that sometime after the Patil brothers had gone with the Sanadis to the field hearing the row, some of these persons, namely, (accused nos 1 to 3 and 5 and 7 in the counter-case) returned from towards the disputed field and threatened to attack him and that he took shelter inside the Patil's house. This witness, has, however, said

that accused no.3 complained to the Patil saying that Ningappa Malali's people went to Hannerda Akkadi Hola to uproot the jowar crop. Although the Patil brothers have not referred to in this Court that on their return Gurlingapa told them the reason why he was sitting in their house closing the door, Shidgauda has mentioned before the Police and Shidlingappa before the Committal Court that Gurlingappa told him that the people from Ningappa Malali's faction had come to beat him. This witness (i.e. Gurlingappa) being a close relative of accused nos 1 and 2, is liable to say something more than what has occurred or what he has seen just to help the case of the accused. Whatever that may be, one thing is certain that accused no.3 went to complain to the Police Patil that a group of persons from the village went armed towards the field for uprooting the jowar crop. Ex.49 is the incomplete complaint which, according to the Patil, was found thrown in his house and which he kept with him until he produced it before the Police S.I. after he made his statement on the 24th of January.

8. I shall now come to discuss the main prosecution evidence relating to the occurrence in the field and the part played by the three accused in it; A fuller account of the occurrence is given by Shidram Chavrad (ex.41) of the incident in the field. According to his evidence, while he was going to Hannerda Akkadi Hola at about four hours after sunrise along Ratgundi road, he heard the noise of a row in the field when he was within a furlong therefrom. He proceeded further till he was within a distance of 30 akkadis from the spot and stood on the road to watch the fight going on there. He saw Ashappa Dandin and Laxman Pujari locked in a scuffle. Thereafter, Laxman struck Ashappa with a spear. Ashappa fell down. Then Yellappa, Ashappa's brother, came on the scene but was attacked by Laxman with his spear, Yellappa also dropped down on the ground as a result of the spear stroke of Laxman. Laxman thereafter struck the fallen Yellappa four or five times with a spear handle. At this juncture

accused nos 1 to 3 came with a spear, axe and sickle respectively from the eastern direction. Seeing them Laxman ran towards his cart towards the Patgundi road. Accused no.2 struck Laxman with an axe on the back. Accused no.1 gave him a spear blow on the left side of his chest. Laxman fell down injured. Accused no.3 was then standing close and was instigating the other accused to beat Laxman. Thereafter he says,/he got frightened and ran home and on his way he informed Laxman's cousin, Bhimappa, about the occurrence and then went to the chavdi and informed the Police Patil. The evidence of this witness has to be taken with great caution inasmuch as he is one of the principal accused in the counter-case, who is charged with having struck Yellappa with a spear. I am not prepared to believe that he was a mere witness to the incident. He was doubtlessly in the thick of the fight. He alleged himself to be a tenant along with the deceased Laxman Pujari of Naagava, had executed a kabulayat (ex.36) in her favour along with the deceased Laxman and was claiming to be in possession of Hannerda Akkadi Hola and having raised the crops therein partly in their own right as tenants and partly for Nagava under an oral agreement of taking half the fodder from the land. I find it difficult to believe that if he was really a tenant who had raised the crops in the land, he would have been able to resist his natural feelings by attacking the wrong-doers if Ashappa and Yellappa hadtres-passed into his land, and particularly when his co-tenant was grappling with Ashappa. It is worthy of note that this witness while attributing the mortal injuries of Ashappa and Yellappa who perished in the field to deceased Laman who is no more to refute that suggestion has himself donned the cloak of an on-looker of the tragedy that was being enacted before his eyes.

It is he who had filed an injunction suit along with Laxman Pujeri claiming to be in possession of the disputed field as tenants of Nagava against Ashappa, Yellappa, accused no.3 and Murgeppa only about a month before this occurrence and the question of granting an interim injunction was yet to be considered by the Court. Under these circumstances, it is impossible to accept the testimoney that he was merely a spectator. While believing, therefore, that he was on the scene of offence not as a spectator but as one of the fighters, I am prepared to accept the testimony so far as it goes to involve accused nos 1 and 2 as the murderers of Laxman Pujeri. It is but natural that accused nos 1 & 2 who were the uncles of the minor Mahadevappa, accused no.3's son who claimed tobe the adopted son of deceased Dundappa, should go to the aid of Ashappa and Yellappa who claimed to be in possession (and I believe that they were in possession) and in defence of whose possession they should have attacked the rival tenant Laxman who had come to commit mischief in the field under the pretext that he was the tenant of Nagava.

9. The evidence of Shidram Chavrad is corroborated by Ningappa Gondi (ex.50) and Rasul Nadaf (ex.52). Ningappa Gondi has stated that while in his field known as Yelakkadi Hola, 10-12 akkadis away from the disputed field, he heard shouts and stood on the western boundary in his field and looked in the direction of the spot. He saw that Laxman Pujeri had caught hold of accused no.1.Accused no.2 then struck Laxman on his back with an axe; Laxman released his grip on accused no.1, thereafter accused no.1 pierced Laxman on his chest with his spear with the result that Laxman fell on the ground. According to his evidence, accused 2 was standing 4-5 akkadis away with a sickle in his hand. Thereafter he says that all the accused ran in the direction of the village. Rasul Nadaf has

testified to the effect that as he was coming from the garden land along the Patgundi road, he saw a scuffle going on between Laxman Pujeri and accused 1; that he stood there and watched the occurrence; that accused no.2 thereafter gave an axe blow on Laxman's back; accused no.1 releasing himself from the grip of Laxman then dealt a blow with a spear on Laxman 's chest and that all the three accused thereafter ran away. It may be noted that both these witnesses have in substance corroborated the testimony of Shidram Chavrad. Of these witnesses, Rasul Nadaf's evidence commends itself to greater belief than that of Ningappa Gondi Rasul is a Muslim against whom there is no particular allgation ~~xxxx~~ as interested on one side or the other. No enmity between him and the accused is also suggested or proved So far as Ningappa Gondi is concerned, there is much that has transpired which would make him an unreliable witness. He is the nephew of Kadappa panch (ex.13) in this case. It is stated by Gurlingappa that Shidgauda Patil's land is cultivate by Kadappa and the lands of this witness Ningappa Gondi at Patgundi are cultivated by the Malalis (accused 1 and 2 in the counter case) on a five years' agreement and that another land is cultivated by one Yellappa Murgod (accd 7 in the counter-case). The witnesshad admitted that he and Shidappa Malali (accd 3 in the counter-case) were sentenced together to 4 months' imprisonment for destroying Govt. records. In a proceeding under the Bombay Agricultural Debtors Relief Act, initiated by Dundappa Malshetty as his creditor, this witness Ningappa compromised the matter with Nagava after Dundappa's death, although it seems that both Nagava and Mahadev had applied to be brought on record as Dundappa's heirs. The witness has gone to the length of asserting that he does not know even till now whose dead bodies the other two which were lying in the field were. If it is true that he was in the field only three pattis remote from the disputed land in which the fight

occurred, It is quite improbable that he should have seen only the gag end of the incident in which the accused nos 1 and 2 happened to be the assailants of deceased Laxman. It appears to me that if he saw in the direction of the spot of the disturbance, as soon as he heard the shouts, he ought to have seen also the incidents to the extent they were visible which culminated in the death of Ashappa and Yellappa. On the other hand, it appears that this witness has purposely suppressed that part of the story and the reason is evidence. He is one of those persons like Kadappa who is favourably bent towards the side of Nagava and her partisans. In the Committal Court this witness has stated that he saw Shidram (accd 4 in the counter case and witness here) and Satappa Mirji (accused 8 in the counter-case) running towards the village whereas, in this Court he has not referred to that incident at all.So far as witness Rasul is concerned, it is possible that when he heared the field of occurrence he saw only the last part of the attack on Laxman as he states he was then going towards the village from his garden land pretty far away from the disputed land.

10. The evidence of Bhimappa Pujeri (ex.33) is only corroborative in character. According to him, when Shidram Chavrad informed him of the incident, he went running to the field and found Ningappa and Rasul standing there 12 akkadis away from the spot and Ningappa told him that the three accused had cut Laxman Pujeri. I do not believe the evidence of this witness. It appears to me he is brought in only for the purpose of furnishing corroboration to the evidence of the other three witnesses. His evidence discloses, however, the fact that he is not a reliable witness.

11. Looking to the evidence of the witnesses, therefore, the following facts constitute the probable

part of the occurrence (excluding the unnatural and unbelievable part of the occurrence) which explains how Laxman Pujeri met with his death that morning. Kallappa finding that a hostile group of villagers had gone to his field to uproot the jowar crop which had been raised by Ashappa and Yellappa who were then in the field and to take forcible possession from them, committed the assault on Ashappa and Yellappa, whose side, however, was reinforced by the assistance of accused nos 1 and 2 who came running there from the direction of their field. It is likely that accused 3 rushed towards the scene of offence after hearing the tumult but could not have reached the field and remained there long enough to take part in the assault. While believing, therefore, the prosecution witnesses that accused 1 and 2 were responsible for inflicting the injuries on Laxman which proved fatal to him, I am not prepared to believe them that accused 3 was also there instigating the other accused. In fact it is only Shidram Chavrad who has stated that accused no.3 also instigated the other two accused in assaulting Laxman. The other two witnesses have merely stated that he was standing closeby. There could not have been a sickle in his hand as the evidence shows that he ran from the Patil's house. There is no likelihood of his having run in that direction with a sickle. But so far as accused nos 1 and 2 are concerned, it is likely that they ran from their field when Ashappa and Yellappa were attacked with a sickle and an axe which are the usual weapons carried by agriculturist while going to their fields for work. I do not believe that accused no.1 had a spear in his hand. It is more likely that he attacked Laxman with a sickle. The Medical officer has stated that there were two grave injuries on Laxman, one behind the right shoulder which, according to him, was possible either with an axe or with a sickle and the second injury which is a penetrating injury below the left collar-bone which injured the internal organs and

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which was sufficient in the ordinary course of nature to cause death, according to the medical officer, was was more probable with a sickle than a spear. Looking to the medical evidence and the evidence of the eye-witnesses, it appears to me particularly these two grave injuries were caused by accused nos 2 and 1 respectively and that Laxman died in consequance.

11. The last point for determination is whether there was common intention on the part of the accused to kill Laxman and further, if they are exempt from liability on the ground that they acted in exercise of the right of private defence. On the first point, there is hardly any scope for doubt that both the accused who inflicted the injuries on deceased Laman were animated with the common intention of doing away with Laxman or of inflicting such injuries to him as would most probably result in his death. The nature of the weapons used (I believe they were a sickle and an axe) the violence of the attack as indicated by the depth of the penetrating injury, the vital part of the body on which the injuries were inflicted , the concerted action of the two brothers in carrying out the attack, are all circumstances pointed in the direction of the common intention which bound the two assailants together. The question whether they are exempt from any criminal liability on the ground of private defence is inextricably bound with the point whether Ashappa and Yellappa their nephew's tenants were actually in possession of the disputed field or not. It is true that the accused have taken a stand under which they were naturally unable to plead the right of private defence; but if the circumstances connected with the evidence are sufficient to show that the accused were within their rights in exercise of the privilege accorded to them by law pertaining to private defence, the Court is bound to take that into consideration. I shall, therefore

discuss the question as to which party was in possession first and then consider the position in the light of the law of private defence.

12. On the question of possession, I am quite convinced that Ashappa and Yellappa were in possession of the field Hannerda Akkadi Hola and had raised the crops therein. I am not prepared to accept the oral testimony of witnesses Shidgauda Patil, ex.4, Shidlingappa ex.8 and Krishnaji Kulkarni ex.26 when they say that thecrops dyring the year of this incident were raised by witness Shidram Chavrad and deceased Laxman Pujeri in the disputed field. They are obviously siding with Nagava and her partisans and are hostile in their attitude towards the accused. The evidence of Krishnaji Kulkarni (ex.26) discloses the fact that there was no dispute in the year 1946-47 which followed the death of Dundappa Malshetty. The Kulkarni has admitted that in the year1945-46 when Dundappa was alive he got his lands cultivated by home farming. He has denied in this Court that in the following year 1946-47, Kallappa ,(accused 3) cultivated Dundappa's lands by home farming but in theCommittal Court he has admitted that in 1946-47, Dundappa's lands were cultivated by Mahadev through his guardian accused no.3 The dippute, according to the Kulkarni between Nagava and accused no.3 arose for the first time in the year 1947-48. The fact that Nagava paid the assessment on 11/6/1947 as shown by the assessment-receipt ex.34 therefore loses significance. On the other hand, the Kulkarni's evidence show that accused 3 had much to do with the management of Dundappa's land in the year 1946-47 as guardian of his minor son Mahadev, the adopted son of Dundappa. The Kulkarni has admitted after having once denied taking shelter behind loss of memory that Tagai loans in 1947 standing against Dundappa Malshetty were paid by accused no.3 In the same way, although he has denied knowledge if the Govt. levy relating to the part of the produce for ration purpose in April 1947 was taken from accused no.3, in the Committal Court this very Kulkarni has admitted that fact. Whatever

that might be, he dispute it appears between Nagava and accused no.3 commenced in1947-48. The events which followed the commencement of that dispute serve as clear pointers of the fact that Ashappa and Yellappa were in the possession of the land in dispute and had raised crops therein in the central strip as the tenants of Mahadev and in the rest for Kallappa. On 22.8.1947, Nagava filed a wahiwati suit against accused no.1 and his minor son Mahadev in respect of Dundappa's land claiming that she was in possession of the lands and complaining of her disturbance to her wahiwat by the tenants. That suit was dismissed for default by the Mamlatdar on 23.12.1947 as shown by ex.47, the certified copy of the plaint and the order of the Mamlatdar in that suit. It is not difficult to understand the reason why Nagava did not appear beforethe Mamlatdar to proeecute that suit. She could not obviously satisfy the Mamlatdar that she was in possession of Dundappa's lands. In order to show that she was making wahiwat of the lands, it appears that she got four kabulayats executed in her favour in respect of different lands by certain persons. These kabulayats are exhs 36 to 39. Out of these, only one, namely, ex.36 was the kabulayat passed by Shidram Chavrad and deceased Laxman Pujeri for the disputed land, survey no.285, pot no.3. All these kabulayats were written by panch witness Kadappa (ex. 13) who is the maternal uncle of witness Ningappa Gondi. That witness has admitted that all four kabulayats were written on one and the same day. They were endorsed by Krishnaji Kulkarni marking the date on whch of them as 10/10/1947. It is not improbable that the kabulayats were actually prepared in October 1947 and antedated with a view to supprt her claim in the wahiwati suit. The probability of their having been executed in October 1947 rather than in August 1947, is emphasized by the fact that in September 1947 Nagava's opponent, accused no.3 , had got executed a registed kabulayat.(ex.32) from Ashappa and Yellappa in respect

of pot no.3 of survey no.285 and other lands and had presented it to the Kulkarni for making an entry in the Tenancy Register and the entry has been made accordingly. It appears that the execution of these four kabulayats from her own people were meant as a counter stroke against the action of Kallappa (accused 3) and also to support her wahiwati suit. In all the kabulayats the word 'hangamshir' (in the proper season) has been interpolated while referring to the time when possession was taken over by the executing tenants. This is a conscious effort made on second thought that the kabulayats should present an appearance of genuineness and that possession was taken over by the tenants at the beginning of the cultivating season although they were executed later. Nagava's wahiwati suit, however, did not succeed. On 28/12/1947, the day previous to the order of dismissal of the wahiwati suit by the Mamlatdar, an injunction suit was got filed through Shidram Chavrad and deceased Laxman Pujeri against Ashappa, Yellappa, accused no.3 and Murgeppa (brother of accused nos 1 and 2) in the Goak Court asserting that they were in possession of pot no.3 of survey no.285 and that they were disturbed in their possession by the defenders in that suit.Exhs 42 to 45 are the plaint, the application for a temporary injunction and the two show cause notices served by the Court in connection with that application. This fight in the very field occured just before the matter in connection with the interim injunction came for hearing before the Court.Obviously that suit would fall without being backed up by possession That pretence had to be made good before the Court turned its attention on the claim made by Shidram and Laxman. The only way in which possession could be secu red was by force and that appears to me, was used on the day that Shidram and Laxman accompanied by other sympathizers of Nagava went from the field armddwith weapons to eject Ashappa and Yellappa by use of ciolence, if necessar

13. There are some more reasons why I do not believe that Shidram could not have been the tenant in possession of the disputed field. He has stated that the agreement between him and Nagava took place in summer and that very day Laxman and he passed the kabulayat (ex.36) in her favour. The kabulayat, however , bears the date 24.8.1947 Apart from this, Shidram has admitted that the earliest he went to the field Hannerda Akkadi Hola for work in connection with the tenancy was 15 days before the kabulayat was passed. If the kabulayat was passed about the third week of August 1947, it means that the first time they stepped in the field was in the first week of August. This contradicts the case of Shidram and his supporters that Shidram and Laxman carried out the summer operations in the land that year. Before the Police, Shidram has made a revealing statement which contradicts the position taken by him at present. He has stated there as follows : "I went to the field (disputed land). Laxman had gone ahead. When I went to the field Ashappa and Yellappa were there. Laxman and I began to uproot the jowar crop. Then Ashappa came towards Laxman to obstruct'. This description of what happened on the day within a shor time of the occurrence is more consonant with the position thatAshappa and Yellappa were in possession and had raised the crops and that Shidram and Laxman and their helpmates had gone to seize that possession forcibly and the first step they did there xxxxto pick up a quarrel with those they intended to dispossess was to uproot the crop which they (Ashappa and Yellappa) had raised. The fact that Ashappa and Yellappa were from Gujanhatti, a hamlet a mile or two away from Masguppi where the lands are situated and that the two brothers are of shady character cannot go to emphasize the improbability of their being in possession for , in the presence of active hostility between the two parties, no one from Masguppi village itself could be expec

ted to cultivate the lands and secondly, if Kallappa, accused no.3, had to maintain his possession behalf of his minor son, it was only through the persons of such character that he could do so. The record also is more in favour of the view that accused no.3 was in possession on behalf of his minor son than Nagava. In the Khata extract ex.28, and in the Record of Rights exhs 29 to 31, Mahadev's name had been entered as the adopted son of Dundappa. It is in evidence that the mutation had been effected in Mahadev's favour in the lifetime of Dundappa himself. There is no need to mention that. On the point of adoption, there is much to be said in favour of accused no.3's son Mahadev rather than in favour of one Satappa, (Dundappa's brother's son) who has been set up as the adopted son of Dundappa by the opposite side. I am not satisfied with the genuineness of the will ex.9 relied upon by persons representing Nagava side. On the other hand, the registered adoption deed ex.33 supporting the title of Mahadev speaks for itself. It is curious to note that Krishnaji Kulkarni who had at first asserted in this case that he was not present at Mahadev's adoption ceremony admitted that he attended that ceremony only when his statement to that effect in the counter-case which was heard only a week before was brought to his notic But the question of title, however, is not the concern of this Court for the purpose of determining the criminal liability of the combatants.

14. The last point which remains to be considered is whether the accused acted in exercise of the right of private defence. Before dealing with what question I may dismiss one point connected with the part played by accused no.3. The only witness among the prosecution witnesses who has stated that he instigated the other two accused standing close to them with a sickle when the attack was going on was Shidram Chavrad. That witness,

however, cannot be believed on every matter that he has come to speak. The greater probability is that accused no.3 could not have been on the scene of offence long enough to take part in the assault even by instigation. He dashed from the Patil's house the moment he heard the noise of the row in the field and by the time the Patil brothers proceeded towards the scene of offence immmediate after, he was seen coming running towards the village. It is not likely that he had a sickle in his hand as is asserted, particularly when it is said that he ran in the direction of the field, in the circumstances mentioned from the Patil's house. In fact his intention to seek the aid of law is stressed by the fact that he went to the Kulkarni and then to the Patil to complain about the likelihood of the breach of the peace in the field. He could not have taken part in the assault as alleged by Shidram and others. Even assuming that he stood closeby when accused nos 1 and 2 were attacking Laxman, it cannot be inferred therefrom that he instigated his brother-in-law in the commission of the crime and shared their criminal intention He, therefore, deserves an acquittal.

15. As regards accused nos 1 and 2, there is no doubt that they intentionally inflicted serious injuries on Laxman which resulted in his death on the spot. However, it is necessary to consider the circumstances in which they committed this crime. They were obviously in their own field which is closeby when Ashappa and Yellappa who were actually in possession of the disputed field, possibly working therein, were attacked by a hostile group armed with deadly weapons. The evidence clearly indicates that Laxman's death followdd the murder of Ashappa and Yellappa, who were the tenants in possession, of their nephew Mahadev. Doubtlessly they went running to the aid of Ashappa and Yellappa who were then being belaboured by their assailants who outnumbered them and who, in fact, killed them on the spot. Accused nos 1 and 2 were entitled in the circumstances

tp act in the exercise of the right of private defence which extends not only to the protection of their own body and property by also of any other person. (See section 97 I P.C.) Here there was apprehension of danger to the life of two persons which apprehension proved to be correct, when they were inflicted the mortal injuries which ended their life. Accused nos 1 and 2 were entitled to defend them even at thecost of killing the assailants. Similarly, so far as the property was concerned, there was here criminal trespass and mischief and there is no doubt that accused nos 1 and 2 acted under such circumstances as amy reasonably cause apprehension that death or grievous hurt will be the consequence of such right or private defence was not exercised. Their case, is therefore, covered by section 103, clause (4) of the I.P.Code. Even here they were entitled to use such force in return as would put an end to the life of the wrong-doer. I do not agree with the argument of the Asstt. Public Prosecutor that accused nos 1 and 2 should not hav taken the law in their own hands and should have have recourse to the protection of the public authorites. In the first place, I cannot hold that in this case there was time to have recourse to the protection of the public authorities. That expression does not mean that a person in actual possession is when attacked to abandon his property for the purpose of seekin assistance of the Police who were not available at hand. The law must not be invoked to oppress persons who when there i no time to have recourse to the public authorities, find themselves in a position in which they must either exercise the privilege of private defence as provided and restricted by the law or submit to a forcible invasion of the right of person or property in cases, where under section 97 the law does not require any such submission. It is never intended that a man

should submit to the deprivation of property in his possession without exercising any right of self-defence should not trust to recover it by the tedious operation of a civil suit with all the weight of possession burden of proof and other circumstances against him. If Ashappa and Yellappa were in possession and they were sought to be ousted forcibly by Laxman and others who entered upon the land, committed mischief and struck them down in the field, accused nos 1 and 2 were entitled to run to their resue and even to kill Laxman who was one of their assailants. I, therefore, hold that both accused nos 1 and 2 were entitled to run to their resue and even to kill Laxman who was one of their assailants. I, therefore, hold that both the accused nos 1 and 2 are exempt from all criminal liability and should be acquitted of the charge of murder.

14. The assessors are unanimously of the opinion that all the three accused are not guilty; I agree with their opinion and acquit the accused.

Order.

Accused nos 1 and 2 are acquitted of the charge under section 302 Read with section 34 and accused no.3 is acquitted of the charge under section 302 read with section 114 I.P.C. and are set at liberty.

Sd. J.R.Nazareth.

19th July 1948. Addl.Sessions Judge.

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Sessions Case No.19 of 1948.

K i n g

Vs.

1. Basalingappa Balappa Gadvi.
2. Shivayogi Balappa Gadvi.
3. Kallappa Balappa Kalpadi.

J u d g m e n t.

This is a counter case arising out of a fight which occurred on 23rd January 1948 at about 11 a.m. in the field known as Hannerda Akkai Hola, survey no.285 of Hasuppi village in Gokak Taluka. In that fight in all three persons met with their death. Two of the dead persons Ashappa Dandin and Yellappa Dandin were of the group on one side and the third person Laxman Ningappa Kujeri was of the opposite group. Sessions Case No.52 of 1948 related to the indictment against ten accused including Shidram Chavrad, one of the three witnesses in this case, for the murder of Ashappa and Yellappa. The present case pertains to the charge against the three accused, Basalingp, Shivyogi and Kallappa (who were prosecution witnesses in that case) for being responsible for the murder of Laxman Ningappa Kujeri. According to the prosecution case, there was a dispute with respect to the ownership and possession of the land Hannerda Akkadi Hola as well as other lands which originally belonged to one Dundappa Malshetty who died on 16.5.1946. The dispute was between accused no.3(who claimed that his son Mahadev was the adopted son of Dundappa Malshetty and asserted to be in possession of the lands belonging to Dundappa) and Nagava, the widow of Dundappa Malshetty, who according to the prosecution case was supported by the accused in the counter case. In Hannerda Akkadi Hola there were three distinct strips. The central strip, po

no.3 of survey no.285) was claimed to have been leased out by Nagava to her two alleged tenants, witness Shidram Chavrad and deceased Laxman Pujeri, while accused no. 3 contended that the said strip was leased out by him to deceased Ashappa Dandin (who was called Laxman Laxman Dandin) and his brother Yellappa Dandin. As regards the other two side strips each party contended that they were reserved for home farming. While it was Nagava's contention that in those strips the crops were raised for her by witness Shidram Chavrad and deceased Laxman Pujeri under an oral agreement that they would remunerate themselves by taking half the fodder part of the yield, accused no.3 contended that the crops were raised by his tenants Laxmappa and Ashappa for him. While this dispute was going on, according to the prosecution case, accused no.3 on the morning of 23rd January 1948, went first to the witness Krishnaji Kulkarni, ex.26, and informed him that some people from the village had gone to his Hannerda Akkadi hola for cutting jowar crop and then, at his advice and accompanied by him went to the Police Patil Shidgauda (ex.4) and complained to him in the same manner. The Police Patil asked him to give a written complaint. As the complaint was being written by witness Gurlingappa Gadvi (ex.48) who was present in the house of the Patil, there was the noise of a row heard. Kallappa left the complaint there and went running in the direction of the field. He was followed by Shidgauda Patil and his brother Shidlingappa along with two Sanadis. As they proceeded, they saw witness Shidra Chavrad and Satappa Mirji coming running towards the village along Patgundi road on one side and the three accused on the other through the fields. The party then proceeded to the scene of offence, Hannerda Akkadi Hola, were they found three dead bodies lying there. They were of Ashappa, Yellappa and Laxman Pujari. The Police Patil kept a watch on the dead bodies, returned home, went to the chavdi and wrote the report (ex.5) and

and sent it to the Kulagod Police Station. The offence was registered on the strength of that report by he Police Jamadar Dastagir Jamadar ex.11 who proceeded to the scene of offence the same evening and got an inquest and scene of offence panchanama drawn up. The investigation was thereafter carried out by the police S.I. who arrived at the village later. Eventually a charge sheet was sent against these three accused for having committed the offence of murder of Laxman Ningappa Pujeri. It is the prosecution case that accused nos 1 and 2 and deceased Ashappa and Yellappa andin committed the murder of Laxman. Ningapa Pujeri in furtherance of their common intention to murder the tenants of Nagava in assertion of the alleged right of Mahadevappa, the alleged adopted son of Dundappa Malshetty and that accused.3 abetted them in the commission of this crime by being present at the time of the offence.

2. In defence, accused 1 and 2 have pleased that they were merely watching the fight going on between Ashappa and Yellappa on the one hand and Nagava's partisans (the accused in the counter-case) on the other from their own field Bhavan patti which was closeby, that they were threatened later by some of the assailants and hence they ran away from their field towards the village and took shelter in their own house which was later on subjected to a stone attack by some of their pursuers. Accused no.3 has asserted that he has been falsely involved by the faction of Ningappa Malali (one of the accused in the counter-case) that when he went to the Patil's house to give a complaint against the members of that faction for having gone to uproot his jowar crop in the Hanmerda Akkad: field and was getting a complaint written by witness Gurlingappa, he heard the noise of a fight in the field and that he ran as far as the field in question and found

only the three dead bodies lying there. He has also stated in defence that he returned to the village and finding the door of his closed, took shelter in one Shidlingappa Dandagi's house and then in his own cattle-shed until the Police arrived in the village. It is his case that the land in dispute was in his possession through his tenants Ashappa and Yellappa Dandin.

3. Accused nos 1 and 2 are brothers whose sister Tayava is given in marriage to accused no.3. All the three accused live in the same house.

4. The following points arise for determination:

1. Is it proved that Laxman Ningappa Pujeri was met with a violent death on 26.1.1948 as alleged by the prosecution ?

2. Is it proved that his death was caused by or in consequence of the acts of the accused nos 1 and 2 ?

3. Is it proved that the accused had the requisite intention or knowlwedge.?

4. Is it proved that accused no.3 abetted accused nos 1 and 2 in the commission of the offence ?

5. Is it proved that accused nos 1 and 2 committed the murder in prosecution of their common intention to muder him ?

6. Did the accused act in exercise of the right of private defence ? If so, what is the offence committed by them ?

5. My findings are :-

1. Yes.

2. Yes.

3. Yes.

4. No.

5. No.

6. Yes; no offence.

Reasons.

6. The fact that Laxman died a violent death on the day

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in question is not in controversy. The inquest panchanama (ex.14) shows the condition in which Laxman's dead body was found on the scene of offence. The medical evidence furnished by the testimony of Doctor Kotbagi (ex.17) with his post-mortem notes (ex.18) relating to Laxman's dead body put beyond doubt the cause of his death. Laxman had sustained as many as four injuries. Three of these were incised wounds and one was an abrasion. Injury no.1 was a horizontal wound 2" x 5/6" varying in depth from 1" to 1½" behind the right shoulder. Injury no.2 was an oblique incised penetarting wound 1½" x ½" going into the thoracic cavity below the innder end of the left collar bone. It was a result of this injury that the heart, lung and the pericardium were cut. The third injury was an incised wound 1" x 1/16" skin deep near the base of the right thumb. According to the Medical Officer, all the four injuries were ante-mortem and injury no.2 in itself was sufficient to cause death in the ordinary course of nature. The other injuries, according to him, were not sufficient to cause death. The first three injuries were in the opinion of the Doctor such as could have been caused by a sharp-edged pointed substance like a spear or a sickle. He is, therefore, of the opinion that injuries nos 1 and 3 might have been caused by an axe./Death according to him, was due to shock and haemorrhage due to injury no.2. In cross-examination, the Medical Officer has admitted that injury no.2 was more probable with a sickle and that injury no.1 was possible either with an axe or with a sickle. In his written opinion (ex.25) sent on the very day of the post-mortem examination, the Medical Officer has stated that death might have been due to shock and haemorrhage as a result of multiple incised wounds causing fracture of the first rib on the left side going deep in thoracic

cavity injuring pericardium, heart, lung and fracutre of the right scapula. Exhs 19 and 20 are the post-mortem notes relating to the other two dead bodies of Ashappa and Yellappa sent to him for post mortem examination from the same scene of offence. Exhs 21 to 26 are the certificates issued in respect of the injuries sustained by accused nos 1, and 2, Nilgavva and Tayava on the same occasion. The oral evidence also is quite clear on the point that Laxman's dead body was found in the same field in which the fight occurred on that day.

7. The question which presents greater difficulty is whether Laxman's death was caused by the accused nos 1 and 2 as alleged by the prosecution. On this point, the prosecution has cited the evidence of three eye-witnesses, Shidram Chavrad (ex.41), Ningappa (ex.50) and Rasulsab Nadaf (ex.52), In addition to the circumstantial evidence tendered by witnesses, Bhimappa Pujeri (ex.53), Gurlingappa (ex.48), Shidgauda Patil (ex.4), Shidlingappa Patil (ex.8) and Krishnaji Kulkarni (ex.26). The evidence of the last four witnesses is cited to show that Kallappa Kalpadi (accused no.3) had gone to Shidgauda (ex. 4), the Police Patil of the village with a complaint that some people from the village had gone armed to the field Hannerda Akkadi Hola for uprooting or cutting the jowar crop standing therein; that as directed by the Police Patil he was getting a complaint written through Gurlingappa Gadvi who was found in the Patil's house and as the complaint was being written they heard the noise of a tumult in the direction of Hannerda Akkadi Hola; that Kallappa (accused no.3) left the complaint there incomplete and ran in the direction of the field; and that he was followed by Shidlingappa and two Jamadis who found three dead bodies of Ashappa, Yellappa and Laxman in the field. with respect to the evidence of these witnesses, I find that they have slightly deviated ~~xx~~ from truth according as their sympathies lay. I am inclined to believe that witnesses Shidgauda, his brother Shidlingappa and Krishnaji Kulkarni have shown a decisive inclination to favour the side opposite to the present accused. Certain statements have been made by these three witnesses previously either before the Police or before the Com. strate which indicate that accused no.3 had made a complaint

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specifically mentioning certain names of some of the persons who composed the group of armed assailants which sallied forth from the village towards the field in dispute. Before the Police Shidgauda Patil has stated that Kallappa came and informed him that Ningappa Malali, Laxman Ningappa Pujeri and others had gone with a cart to cut jowar crop. In the Committal Court also he has stated that Kallappa came to him saying that Shidram, Satu, Rama, Ningappa Shivarayi, Shiddingand Kalloli were going to uproot his jowar crop from his field Hannerda Akkadi Hola. Similarly, before the Police he has made a statement indicating that most of these persons referred to above, ran from the scene of offence towards the village along Patgundi road armed with axes, spears and sickles after they reached the field. It may be noted that in his deposition before this Court, Shidgauda Patil has stated that accused no.3 came to him and merely informed him that some people (without specifying names) had gone to Hannerda Akkadi Hola to uproot the jowar crop. It is admitted by the Police Patil that Kallapa. the maternal uncle of Laxman Bharmapa Pujeri and his brother Kalloli (two of the accused in the counter-case) are his tenants. He has also admitted that he has borrowed Rs 100 from Murgeppa brother of accused 1 and 2, on a pro-note about 10 months ago which loan he has not yet repaid. It is the suggestion of the defence that on this account there was some friction between him and Murgeppa. In the same way, Shidlingappa, the brother of the Patil, has stated before the Police that accused no.3 complained to the Patil saying that Ningappa Malali, Laxman Bharmappa Pujeri and others had gone to the field with a cart to cut jowar crop. In the Committal Court also he has stated that he said that Shidram, Ningappa, Shiva ayi and 8 or 9 others went to uproot the jowar crop in the Hannerda Akkadi Hola. This witness has also stated before the Police that when they went to the field where the offence took place, Ningappa Malali, Shidlinga Yekundi

Shidram Chavrad, Yellappa Arer, Kalloli Pujeri and Yellappa Lakundi, Satappa Mirje, Shivraui Gorvar went from the field towards the village with axes, sickles and sticks to their land along the Patgundi road. It may be noted that in this Court so far as the accused in the counter-case are concerned, no reference is made by this witness either as having been referred to by accused no.3 in his complaint or as having been seen by him running away from the field with weapons. Both these brothers have, however, stated that as they were proceeding towards the scene of offence, they saw Shidram Chavrad (who is an eye-witness in this case and an accused in the counter-case) and Satappa Mirji (accused in the counter-case) coming running towards the village from the direction of the scene of offence along the Patgundi road and on the other side they saw accused nos 1 and 2 going running towards the village through the fields. Shidgauda Patil has said that he also saw Kallappa going running along with accused nos 1 and 2. In the Committal Court, however, Shidlingappa has stated that he saw 8 or 9 persons going on one side and out of them he recognised Shivram, Shidram, Satteppa and Shidlingappa.So far as Krishnaji Kulkarni is concerned, in the Committal Court, he has stated that accused no.3 told him that 7 or 8 persons from Nagava's party had gone to cut the crops; whereas here he says that ' he merely said to him that 'people were going' to Hannerda Akkadi Hola for cutting jowar crop. Though Shidlingappa (ex.8) has admitted in the Committal Court that Mahadev is the adopted son of Dundappa, in this Court he denies knowledge of that fact. According to Gurlingappa Gadvi (ex.48), who is a cousin of accused nos 1 and 2, he saw Ningappa Malali, Ramappa Malali, Shidram Chavrad, Shidlingappa, Yellappa, Yellappa, Shivrayi, Kalloli and Yellappa Arer (accused nos 1 to 7 and 9 in the counter case) going with weapons passing by the Patil's house towards the field. He has also said that sometime after the Patil brothers had gone with the Sanadis to the field hearing the row, some of these persons, namely, (accused nos 1 to 3 and 5 and 7 in the counter-case) returned from towards the disputed field and threatened to attack him and that he took shelter inside the Patil's house. This witness, has, however, said

that accused no.3 complained to the Patil saying that Ningappa Malali's people went to Hannerda Akkadi Hola to uproot the jowar crop. Although the Patil brothers have not referred to in this Court that on their return Gurlingapa told them the reason why he was sitting in their house closing the door, Shidgauda has mentioned before the Police and Shidlingappa before the Committal Court that Gurlingappa told him that the people from Ningappa Malali's faction had come to beat him.This witness (i.e. Gurlingappa) being a close relative of accused nos 1 and 2, is liable to say something more than what has occurred or what he has seen just to help the case of the accused. Whatever that may be, one thing is certain that accused no.3 went to complain to the Police Patil that a group of persons from the village went armed towards the field for uprooting the jowar crop. Ex.49 is the incomplete complaint which, according to the Patil, was found thrown in his house and which he kept with him until he produced it before the Police S.I. after he made his statement on the 24th of January.

8. I shall now come to discuss the main prosecution evidence relating to the occurrence in the field and the part played by the three accused in it; A fuller account of the occurrence is given by Shidram Chavrad (ex.41) of the incident in the field. According to his evidence, while he was going to Hannerda Akkadi Hola at about four hours after sunrise along Patgundi road, he heard the noise of a row in the field when he was within a furlong therefrom. He proceeded further till he was within a distance of 30 akkadis from the spot and stood on the road to watch the fight going on there. He saw Ashappa Dandin and Laxman Pujari locked in a scuffle. Thereafter, Laxman struck Ashappa with a spear. Ashappa fell down. Then Yellappa, Ashappa's brother, came on the scene but was attacked by Laxman with his spear, Yellappa also dropped down on the ground as a result of the spear stroke of Laxman. Laxman thereafter struck the fallen Yellappa four or five times with a spear handle. At this juncture

accused nos 1 to 3 came with a spear, axe and sickle respectively from the eastern direction. Seeing them Laxman ran towards his cart towards the Patgundi road. Accused no.2 struck Laxman with an axe on the back. Accused no.1 gave him a spear blow on the left side of his chest. Laxman fell down injured. Accused no.3 was then standing closet and was instigating the other accused to beat Laxman. Thereafter he says, he got frightened and ran home and on his way he informed Laxman's cousin, Bhimappa, about the occurrence and then went to the chavdi and informed the Police Patil. The evidence of this witness has to be taken with great caution inasmuch as he is one of the principal accused in the counter-case, who is charged with having struck Yellappa with a spear. I am not prepared to believe that he was a mere witness to the incident. He was doubtlessly in the thick of the fight. He alleged himself to be a tenant along with the deceased Laxman Pujari of Naagava, had executed a kabulayat (ex.36) in her favour along with the deceased Laxman and was claiming to be in possession of Hannerda Akkadi Hola and having raised the crops therein partly in their own right as tenants and partly for Nagava under an oral agreement of taking half the fodder from the land. I find it difficult to believe that if he was really a tenant who had raised the crops in the land, he would have been able to resist his natural feelings by attacking the wrong-doers if Ashappa and Yellappa hadtres-passed into his land, and particularly when his co-tenant was grappling with Ashappa. It is worthy of note that this witness while attributing the mortal injuries of Ashappa and Yellappa who perished in the field to deceased Laman who is no more to refute that suggestion has himself donned the cloak of an on-looker of the tragedy that was being enacted before his eyes.

It is he who had filed an injunction suit along with Laxman Pujeri claiming to be in possession of the disputed field as tenants of Nagava against Ashappa, Yellappa, accused no.3 and Murgeppa only about a month before this occurrence and the question of granting an interim injunction was yet to be considered by the Court Under these circumstances, it is impossible to accept the testimoney that he was merely a spectator. While believing, therefore, that he was on the scene of offence not as a spectator but as one of the fighters, I am prepared to accept the testimony so far as it goes to involve accused nos 1 and 2 as the murderers of Laxman Pujeri. It is but natural that accused nos 1 & 2 who were the uncles of the minor Mahadevappa, accused no.3's son who claimed tobe the adopted son of deceased Dundappa, should go to the aid of Ashappa and Yellappa who claimed to be in possessior (and I believe that they were in possession) and in defence of whose possession they should have attacked the rival tenant Laxman who had come to commit mischief in the field under the pretext that he was the tenant of Nagava.

9. The evidence of Shidram Chavrad is corroborated by Ningappa Gondi (ex.50) and Rasul Nadaf (ex.52). Ningappa Gondi has stated that while in his field known as Yel-Akkadi Hola, 10-12 akkadis away from the disputed field, he heard shouts and stood on the western boundary in his field and looked in the direction of the spot. He saw that Laxman Pujeri had caught hold of accused no.1.Accused no.2 then struck Laxman on his back with an axe; Laxman released his grip on accused no.1, thereafter accused no.1 pierced Laxman on his chest with his spear with the result that Laxman fell on the ground. According to his evidence, accused 2 was standing 4-5 akkadis away with a sickle in his hand. Thereafter he says that all the accused ran in the direction of the village. Rasul Nadaf has

testified to the effect that as he was coming from the garden land along the Patgundi road, he saw a scuffle going on between Laxman Pujeri and accused 1; that he stood there and watched the occurrence; that accused no.2 thereafter gave an axe blow on Laxman's back; accused no.1 releasing himself from the grip of Laxman then dealt a blow with a spear on Laxman 's chest and that all the three accused thereafter ran away. It may be noted that both these witnesses have in substance corroborated the testimony of Shidram Chavrad. Of these witnesses, Rasul Nadaf's evidence commends itself to greater belief than that of Ningappa Gondi Rasul is a Muslim against whom there is no particular allgation ~~that~~ as interested on one side or the other. No enmity between him and the accused is also suggested or proved So far as Ningappa Gondi is concerned, there is much that has transpired which would make him an unreliable witness. He is the nephew of Kadappa panch (ex.13) in this case. It is stated by Gurlingappa that Shidgauda Patil's land is cultivate by Kadappa and the lands of this witness Ningappa Gondi at Patgundi are cultivated by the Malalis (accused 1 and 2 in the counter case) on a five years' agreement and that another land is cultivated by one Yellappa Murgod (accd 7 in the counter-case). The witnesshad admitted that he and Shidappa Malali (accd 3 in the counter-case) were sentenced together to 4 months' imprisonment for destroying Govt. records. In a proceeding under the Bombay Agricultural Debtors Relief Act, initiated by Dundappa Malshetty as his creditor, this witness Ningappa compromised the matter with Nagava after Dundappa's death, although it seems that both Nagava and Mahadev had appl to be brought on record as Dundappa's heirs. The witness has gone to the length of asserting that he does not know even till now whose dead bodies the other two which were lying in the field were. If it is true that he was in the field only three pattis remote from the disputed land in which the fight

occurred, It is quite improbable that he should have seen only the gag end of the incident in which the accused nos 1 and 2 happened to be the assailants of deceased Laxman. It appears to me that if he saw in the direction of the spot of the disturbance, as soon as he heard the shouts, he ought to have seen also the incidents to the extent they were visible which culminated in the death of Ashappa and Yellappa. On the other hand, it appears that this witness has purposely suppressed that part of the story and the reason is evidence. He is one of those persons like Kadappa who is favourably bent towards the side of Nagava and her partisans. In the Committal Court this witness has stated that he saw Shidram (accd 4 in the counter case and witness here) and Satappa Mirji (accused 8 in the counter-case) running towards the village whereas, in this Court he has not referred to that incident at all.So far as witness Rasul is concerned, it is possible that when he heared the field of occurrence he saw only the last part of the attack on Laxman as he states he was then going towards the village from his garden land pretty far away from the disputed land.

10. The evidence of Bhimappa Pujeri (ex.33) is only corroborative in character. According to him, when Shidram Chavrad informed him of the incident, he went running to the field and found Ningappa and Rasul standing there 12 akkadis away from the spot and Ningappa told him that the three accused had cut Laxman Pujeri. I do not believe the evidence of this witness. It appears to me he is brought in only for the purpose of furnishing corroboration to the evidence of the other three witnesse His evidence discloses, however, the fact that he is not a reliable witness.

11. Looking to the evidence of the witnesses, therefore, the following facts constitute the probable

part of the occurrence (excluding the unnatural and unbelievable part of the occurrence) which explains how Laxman Pujeri met with his death that morning. Kallappa finding that a hostile group of villagers had gone to his field to uproot the jowar crop which had been raised by Ashappa and Yellappa who were then in the field and to take forcible possession from them, committed the assault on Ashappa and Yellappa, whose side, however, was reinforced by the assistance of accused nos 1 and 2 who came running there from the direction of their field. It is likely that accused 3 rushed towards the scene of offence after hearing the tumult but could not have reached the field and remained there long enough to take part in the assault. While believing, therefore, the prosecution witnesses that accused 1 and 2 were responsible for inflicting the injuries on Laxman which proved fatal to him, I am not prepared to believe them that accused 3 was also there instigating the other accused. In fact it is only Shidram Chavrad who has stated that accused no.3 also instigated the other two accused in assaulting Laxman. The other two witnesses have merely stated that he was standing closeby. There could not have been a sickle in his hand as the evidence shows that he ran from the Patil's house. There is no likelihood of his having run in that direction with a sickle. But so far as accused nos 1 and 2 are concerned, it is likely that they ran from their field when Ashappa and Yellappa were attacked with a sickle and an axe which are the usual weapons carried by agriculturists while going to their fields for work. I do not believe that accused no.1 had a spear in his hand. It is more likely that he attacked Laxman with a sickle. The Medical officer has stated that there were two grave injuries on Laxman, one behind the right shoulder which, according to him, was possible either with an axe or with a sickle and the second injury which is a penetrating injury below the left collar bone which injured the internal organs and

which was sufficient in the ordinary course of nature to cause death, according to the medical officer, was was more probable with a sickle than a spear. Looking to the medical evidence and the evidence of the eye-witnesses, it appears to me particularly these two grave injuries were caused by accused nos 2 and 1 respectively and that Laxman died in consequance.

11. The last point for determination is whether there was common intention on the part of the accused to kill Laxman and further, if they are exempt from liability on the ground that they acted in exercise of the right of private defence. On the first point, there is hardly any scope for doubt that both the accused who inflicted the injuries on deceased Laman were animated with the common intention of doing away with Laxman or of inflicting such injuries to him as would most probably result in his death. The nature of the weapons used (I believe they were a sickle and an axe) the violence of the attack as indicated by the depth of the penetrating injury, the vital part of the body on which the injuries were inflicted , the concerted action of the two brothers in carrying out the attack, are all circumstances pointed in the direction of the common intention which bound the two assailants together. The question whether they are exempt from any criminal liability on the ground of private defence is inextricably bound with the point whether Ashappa and Yellappa their nephew's tenants were actually in possession of the disputed field or not. It is true that the accused have taken a stand under which they were naturally unable to plead the right of private defence; but if the circumstances connected with the evidance are sufficient to show that the accused were within their rights in exercise of the privilege accorded to them by law pertaining to private defence, the Court is bound to take that into consideration. I shall, therefor

discuss the question as to which party was in possession first and then consider the position in the light of the law of private defence.

12. On the question of possession, I am quite convinced that Ashappa and Yellappa were in possession of the field Hannerda Akkadi Hola and had raised the crops therein. I am not prepared to accept the oral testimony of witnesses Shidgauda Patil, ex.4, Shidlingappa ex.8 and Krishnaji Kulkarni ex.26 when they say that thecrops during the year of this incident were raised by witness Shidram Chavrad and deceased Laxman Pujeri in the disputed field. They are obviously siding with Nagava and her partisans and are hostile in their attitude towards the accused. The evidence of Krishnaji Kulkarni (ex.26) discloses the fact that there was no dispute in the year 1946-47 which followed the death of Dundappa Malshetty. The Kulkarni has admitted that in the year1945-46 when Dundappa was alive he got his lands cultivated by home farming. He has denied in this Court that in the following year 1946-47, Kallappa ,(accused 3) cultivated Dundappa's lands by home farming but in theCommittal Court he has admitted that in 1946-47, Dundappa's lands were cultivated by Mahadev through his guardian accused no.3 The dispute according to the Kulkarni between Nagava and accused no.3 arose for the first time in the year 1947-48. The fact that Nagava paid the assessment on 11/6/1947 as shown by the assessment-receipt ex.34 therefore loses significance. On the other hand, the Kulkarni evidence show that accused 3 had much to do with the management of Dundappa's land in the year 1946-47 as guardian of his minor son Mahadev, the adopted son of Dundappa. The Kulkarni has admitted after having once denied taking shelter behind loss of memory that Tagai loans in 1947 standing against Dundappa Malshetty were paid by accused no.3 In the same way, although he has denied knowledge if the Govt. levy relating to the part of the produce for ration purpose in April 1947 was taken from accused no.3, in the Committal Court this very Kulkarni has admitted that fact. Whatever

that might be, he dispute it appears between Nagava and accused no.3 commenced in1947-48. The events which followed the commencement of that dispute serve as clear pointers of the fact that Ashappa and Yellappa were in the possession of the land in dispute and had raised crops therein in the central ~~xxx~~ strip as the tenants of Mahadev and in the rest for Kallappa. On 22.8.1947, Nagava filed a wahiwati suit against accused no.1 and his minor son Mahadev in respect of Dundappa's land claiming that she was in possession of the lands and complaining of her disturbance to her wahiwat by the tenants. That suit was dismissed for default by the Mamlatdar on 23.12.1947 as shown by ex.47, the certified copy of the plaint and the order of the Mamlatdar in that suit. It is not difficult to understand the reason why Nagava did not appear beforethe Mamlatdar to prosecute that suit. She could not obviously satisfy the Mamlatdar that she was in possession of Dundappa's lands. In order to show that she was making wahiwat of the lands, it appears that she got four kabulayats executed in her favour in respect of different lands by certain persons. These kabulayats are exhs 36 to 39. Out of these, only one, namely, ex.36 was the kabulayat passed by Shidram Chavrad and deceased Laxman Pujeri for the disputed land, survey no.285, pot no.3. All these kabulayats were written by panch witness Kadappa (ex. 13) who is the maternal uncle of witness Ningappa Gondi. That witness has admitted that all four kabulayats were written on one and the same day. They were endorsed by Krishnaji Kulkarni marking the date on whch of them as 10/10/1947. It is not improbable that the kabulayats were actually prepared in October 1947 and antedated with a view to supprt her claim in the wahiwati suit. The probability of their having been executed in October 1947 rather than in August 947, is emphasized by the fact that in September 1947 agava's opponent, accused no.3 , had got executed a regised kabulayat (ex.32) from Ashappa and Yellappa in respect

of pot no.3 of survey no.285 and other lands and had presented it to the Kulkarni for making an entry in the Tenancy Register and the entry has been made accordingly. It appears that the execution of these four kabulayats from her own people were meant as a counter stroke against the action of Kallappa (accused 3) and also to support her wahiwati suit. In all the kabulayats the word 'hangamshir' (in the proper season) has been interpolated while referring to the time when possession was taken over by the executing tenants This is a conscious effort made on second thought that the kabulayats should present an appearance of genuineness and that possession was taken ov by the tenants at the beginning of the cultivating season although they were executed later. Nagava's wahiwati suit, however, did not succeed. On 28/12/1947, the day previous to the order of dismissal of the wahiwati suit by the Mamlatdar, an injunction suit was got filed through Shidram Chavrad and deceased Laxman Pujeri against Ashappa, Yellapp accused no.3 and Murgeppa (brother of accused nos 1 and 2) in the Goak Court asserting that they were in possession of pot no.3 of survey no.285 and that they were disturbed in their possession by the defenders in that suit.Exhs 42 t 45 are the plaint, the application for a temporary injuncti and the two show cause notices served by the Court in connection with that application. This fight in the very field occured just before the matter in connection with the interim injunction came for hearing before the Court.Obviou that suit would fall without being backed up by possession That pretence had to be made good before the Court turned i attention on the claim made by Shidram and Laxman. The only way in which possession could be secu red was by force and that appears to me, was used on the day that Shidram and Laxman accompanied by other sympathizers of Nagava went fro the field armedwith weapons to eject Ashappa and Yellappa by use of ciolence, if necessary.

13! There are some more reasons why I do not believe that Shidram could not have been the tenant in possession of the disputed field. He has stated that the agreement between him and Nagava took place in summer and that very day Laxman and he passed the kabulayat (ex.36) in her favour. The kabulayat, however , bears the date 24.8.1947 Apart from this, Shidram has admitted that the earliest he went to the field Hannerda Akkadi Hola for work in connection with the tenancy was 15 days before the kabulayat was passed. If the kabulayat was passed about the third week of August 1947, it means that the first time they stepped in the field was in the first week of August. This contradicts the case of Shidram and his supporters that Shidram and Laxman carried out the summer operations in the land that year. Before the Police, Shidram has made a revealing statement which contradicts the position taken by him at present. He has stated there as follows : "I went to the field (disputed land). Laxman had gone ahead. When I went to the field Ashappa and Yellappa were there. Laxman and I began to uproot the jowar crop. Then Ashappa came towards Laxman to obstruct'. T his description of what happened on the day within a short time of the occurrence is more consonant with the position thatAshappa and Yellappa were in possession and had raised the crops and that Shidram and Laxman and their helpmates had gone to seize that possession forcibly and the first step they did there was to pick up a quarrel with those they intended to dispossess was to uproot the crop which they (Ashappa and Yellappa) had raised. The fact that Ashappa and Yellappa were from Gujanhatti, a hamlet a mile or two away from Masguppi where the lands are situated and that the two brothers are of shady character cannot go to emphasize the improbability of their being in possession, for , in the presence of active hostility between the two parties, no one from Masguppi village itself could be expec-

ted to cultivate the lands and secondly, if Kallappa, accused no.3, had to maintain his possession behalf of his minor son, it was only through the persons of such character that he could do so. The record also is more in favour of the view that accused no.3 was in possession on behalf of his minor son than Nagava. In the Khata extract ex.28, and in the Record of Rights exhs 29 to 31, Mahadev's name had been entered as the adopted son of Dundappa. It is in evidence that the mutation had been effected in Mahadev's favour in the lifetime of Dundappa himself. There is no need to mention that. On the point of adoption, there is much to be said in favour of accused no.3's son Mahadev rather than in favour of one Satappa, (Dundappa's brother's son) who has been set up as the adopted son of Dundappa by the opposite side. I am not satisfied with the genuineness of the will ex.9 relied upon by persons representing Nagava's side. On the other hand, the registered adoption deed ex.33 supporting the title of Mahadev speaks for itself. It is curious to note that Krishnaji Kulkarni who had at first asserted in this case that he was not present at Mahadev's adoption ceremony admitted that he attended that ceremony only when his statement to that effect in the counter-case which was heard only a week before was brought to his noti "But the question of title, however, is not the concern of this Court for the purpose of determining the criminal liability of the combatants.

14. The last point which remains to be considered is whether the accused acted in exercise of the right of private defence. Before dealing with what questi I may dismiss one point connected with the part played by accused no.3. The only witness among the prosecution witnesses who has stated that he instigated the other two accused standing close to them with a sickle when the attack was going on was Shidram Chavrad. That witness,

however, cannot be believed on every matter that he has come to speak. The greater probability is that accused no.3 could not have been on the scene of offence long enough to take part in the assault even by instigation. He dashed from the Patil's house the moment he heard the noise of the row in the field and by the time the Patil brothers proceeded towards the scene of offence immmediately after, he was seen coming running towards the village. It is not likely that he had a sickle in his hand as is asserted, particularly when it is said that he ran in the direction of the field, in the circumstances mentioned from the Patil's house. In fact his intention to seek the aid of law is stressed by the fact that he went to the Kulkarni and then to the Patil to complain about the likelihood of the breach of the peace in the field. He could not have taken part in the assault as alleged by Shidram and others. Even assuming that he stood closeby when accused nos 1 and 2 were attacking Laxman, it cannot be inferred therefrom that he instigated his brother-in-law in the commission of the crime and shared their criminal intention. He, therefore, deserves an acquittal.

15. As regards accused nos 1 and 2, there is no doubt that they intentionally inflicted serious injuries on Laxman which resulted in his death on the spot. However, it is necessary to consider the circumstances in which they committed this crime. They were obviously in their own field which is closeby when Ashappa and Yellappa who were actually in possession of the disputed field, possibly working therein, were attacked by a hostile group armed with deadly weapons. The evidence clearly indicates that Laxman's death followed the murder of Ashappa and Yellappa, who were the tenants in possession, of their nephew Mahadev. Doubtlessly they went running to the aid of Ashappa and Yellappa who were then being belaboured by their assailants who outnumbered them and who, in fact, killed them on the spot. Accused nos 1 and 2 were entitled in the circumstances

tp act in the exercise of the right of private defence which extends not only to the protection of their own body and property by also of any other person. (See section 97 I P.C.) Here there was apprehension of danger to the life of two persons which apprehension proved to be correct, when they were inflicted the mortal injuries which ended their life. Accused nos 1 and 2 were entitled to defend them even at thecost of killing the assailants. Similarly, so far as the property was concerned, there was here criminal trespass and mischief and there is no doubt that accused nos 1 and 2 acted under such circumstances as amy reasonably cause apprehension that death or grievous hurt will be the consequence of such right or private defence was not exercised. Their case, is therefore,covered by section 103, clause (4) of the I.P.Code. Even here they were entitled to use such force in return as would put an end to the life of the wrong-doer. I do not agree with the argument of the Asstt. Public Prosecutor that accused nos 1 and 2 should not have taken the law in their own hands and should have have recourse to the protection of the public authorites. In the first place, I cannot hold that in this case there was time to have recourse to the protection of the public authorities. That expression does not mean that a person in actual possession is when attacked to abandon his property for the purpose of seeking assistance of the Police who were not available at hand. The law must not be invoked to oppress persons who when there is no time to have recourse to the public authorities, find themselves in a position in which they must either exercise the privilege of private defence as provided and restricted by the law or submit to a forcible invasion of the right of person or property in cases, where under section 97 the law does not require any such submission. It is never intended that a man

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should submit to the deprivation of property in his possession without exercising any right of self-defence should not trust to recover it by the tedious operation of a civil suit with all the weight of possession burden of proof and other circumstances against him. If Ashappa and Yellappa were in possession and they were sought to be ousted forcibly by Laxman and others who entered upon the land, committed mischief and struck them down in the field, accused nos 1 and 2 were entitled to run to their resue and even to kill Laxman who was one of their assailants. I, therefore, hold that both accused nos 1 and 2 were entitled to run to their resue and even to kill Laxman who was one of their assailants. I, therefore, hold that both the accused nos 1 and 2 are exempt from all criminal liability and should be acquitted of the charge of murder.

14. The assessors are unanimously of the opinion that all the three accused are not guilty; I agree with their opinion and acquit the accused.

O r d e r.

Accused nos 1 and 2 are acquitted am of the charge under section 302 read with section 34 and accused no.3 is acquitted of the charge under section 302 read with section 114 I.P.C. and are set at liberty.

Sd. J.R.Nazareth.

19th July 1948. Addl.Sessions Judge.

F 97 65

Judgment recorded by the High Court i.....

Revision Application No.161 of 1949 in the case of Rex vs. Shidling Sangappa Yekundi, No.8 and another.

.....

Counsel Mr. S.M. Shah with Mr. H.F.M. Reddi, Advocate for Applicant accused.

The Assistant Government Pleader for the Crown.

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Coram:-WESTON & DIXIT, JJ.

14th April 1949.

Oral Judgment (per Dixit, J.):-

This is an application for enhancement of the sentences imposed upon accused Nos.3 and 4. These accused persons were among the ten accused persons who were tried by the learned Additional Sessions Judge, Belgaum, in sessions Case No. 32 of 1948. The charge against the accused was under section 302 read with section 34 of the Indian Penal Code for having intentionally caused the murder of one Ashappa alias Laxman Dandin and his brother Yellappa Dandin in furtherance of their common intention. It appears that there were three eye-witnesses in respect of the attack upon Yellappa. The evidence of the eye-witnesses was that accused No.4 gave a spear blow to Yellappa and accused No.3 wielded a stick against him. The learned Additional Sessions Judge accepted their evidence as consistent and reliable and ultimately he came to the conclusion that accused Nos.3 and 4 alone out of the ten accused were proved to be the members of the hostile group which attacked Ashappa and Yellappa

and the attack resulted in their death. He convicted accused No. 4 under section 326 read with section 34 and sentenced him to suffer rigorous imprisonment for a period of eithg years, and he convicted accused No.8 under section 326 read with section 34 and sentenced him to suffer rigorous imprisonment for a period of four years.

Against these convictions and sentences accused Nos.8 and 4 filed in this Court Criminal Appeal No.581 of 1948 and this Court dismissed their appeal on 20th January 1949.

Shortly after the date of dismissal of the appeal, Government have filed the present application asking that the sentences imposed upon these accused be enhanced. Now, the conviction was recorded on 10th July 1948 and instead of applying for enhancement of sentence as quickly as possible Government waited for some time for making up their mind. The result is that the appeal preferred by the accused and the application for enhancement of sentence are coming in different proceedings before us. Now, according to the view of the learned Additional Sessions Judge which is to found expressed in his judgment, paragraph 24, it seems that although the accused persons had a common intention it was not proved that the two accused persons had an intention to murder Ashappa and Yellappa. Upon that finding the conviction was recorded under section 326 read with section 34, though different sentences were imposed upon accused Nos.8 and 4. Accused No.4 held a spear with which he gave a blow to Yellappa and accused No.8 had only a stick. That was the reason why the learned Additional Sessions Judge imposed different sentences upon these two accused persons. Now, the sentence of eight years' rigorous imprisonment cannot be said to be an inadequate sentence for an offence under section 326, and a

nd as accused No.8 had only a stick, the sentence of four ears' rigorous imprisonment cannot be said to be inadequate ither. It will be seen from the post-mortem examination upon he dead body of Yellappa that Yellappa had 11 injuries. In the opinion of the doctor injury No.2 might have been caused with a sharp edged cutting istrument and it is not clear upon the evidence that the injury which resulted in his death was caused by the istument possessed by accused No.4. Under these circumstances we are not prepared to hold that the sentence is in any way inadequate.

Where an accused person appeals against his conviction and sentence and Government desire to apply for enhancement of sentence upon the ground that the sentence is inadequate, it is desirable that both the appeal and the enhancement application come up together for disposal. In this case that has not taken place. However, we do not think we should accede to the request made on behalf of Government and enhance the sentences imposed upon the accused.

The rule will, therefore, be discharged.

RJS/-

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RJS/-

25-6-49.

Judgment recorded by the High Court in Criminal Revision Application No.161 of 1949 in the case of P. Shidling Sangappa Yekundi, No.3 and another.

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Counsel Mr. S.M. Shah with Mr. H.F.M. Reddi, Advocate for Applicant accused.

The Assistant Government Pleader for the Crown.

.....

Coram:-WESTON & DIXIT, JJ.

14th April 1949.

Oral Judgment (per Dixit, J.):-

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and as accused No.3 had only a stick, the sentence of four years' rigorous imprisonment cannot be said to be inadequate either. It will be seen from the post-mortem examination upon the dead body of Yellappa that Yellappa had 11 injuries. In the opinion of the doctor injury No.2 might have been caused with a sharp edged cutting istrument and it is not clear upon the evidence that the injury which resulted in his death was caused by the istument possessed by accused No.4. Under these circumstances we are not prepared to hold that the sentence is in any way inadequate.

Where an accused person appeals against his conviction and sentence and Government desire to apply for enhancement of sentence upon the ground that the sentence is inadequate, it is desirable that both the appeal and the enhancement application come up together for disposal. In this case that has not taken place. However, we do not think we should accede to the request made on behalf of Government and enhance the sentences imposed upon the accused.

The rule will, therefore, be discharged.

RJS/-

25-6-49.

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Judgment recorded by the High Court in Criminal -- Revision Application No. 288 of 1947 (By Government) in the case of Imperator Vs. Mayappa Bhimappa Kutturvar. No.1 and another No.2.

The Government Pleader for the Government of the Provinc of Bombay.
Mr.H.F.M.Reddi, Advocate, appointed for the accused.

Coram:- Sen and Dixit JJ)

26th August 1947.

Oral Judgment per Dixit J. :-

This is an application for enhancement of the sentence upon the accused by the Resident Magistrate First Class, Hongal, in criminal case No.407 of 1946. The facts are not seriously in dispute.

Accused No.1 is a resident of the village Saundatti; No.2 is also a resident of the same place and her occupation is that of an agricultural labourer. Accused No.1 has a cart and the prosecution story is that on August 9, 1946, 5 half bags of rice measuring 147 seers and 1 half bag of wheat measuring 25 seers were transported by accused No.2 from Inam Hongal to Saundatti without a permit in the cart of accused No.1. Accused No.1 was therefore prosecuted for an offence punishable under Rule 81(4) read with Rule 121 of the Defence of India Rules and accused No.2 was prosecuted for an offence punishable under Rule 81(4) of the Rules. Originally there were in all five accused but accused Nos. 3 to 5 were were discharged by the Magistrate. Both the accused, that is accused Nos. 1 and 2 pleaded guilty to the charge. Accused No.1 stated that he had gone to Inam Hongal to bring Kadbi for his bullocks and that while he was returning he put up accused Nos. 2 to 5 in his cart and as accused No. 2 stated that the bags contended grains he did not further ask her what the grains were. Accused No.2 stated that she did not know

that a permit was required for bringing rice and wheat, and that as she had settled the marriage of her son she had brought the rice and wheat in the cart of accused No.1. It is to be noted that the articles transported are large, in all 5 half bags containing 147 seers of rice and 1 half bag containing 25 seers of wheat. It is also to be noted that there were in the cart five persons including accused Nos. 1 and 2 The learned Magistrate took the view that this was a clever device on the part of the accused No. 2 distribute the rice into as many bags as possible, and this lent support to the theory that accused No. 2 had purposely divided the quantity into smaller units. He observed in the course of his judgment tha the prosecution did not rely upon fact that accused No. 2 was proved to be a black-marketeer in food-grains. In the result he convicted accused No.1 and sentenced him to pay a fine of Rs.50 in default rigorous imprisonment for one month. He also convicted accused No.2 and sentenced her to pay a fine of Rs.150 in default rigorous imprisonment for three months.

Upon this application for enhancement of the sentences the learned Government Pleader says that this is a clear case of black-marketing. As I have already stated, the occupation of accused No. 2 is described in her statement as that of an agricultural labourer. It appears that the sale proceeds came to rs.40-1-6. It is the case of the second accused that she wanted this rice and wheat for the purpose of the marriage of her son. There is no evidence as to whether the marriage was performed. The only inference therefore is that she purchased these bags of rice and wheat for the purpose of black-marketing and for nothing else. It is difficult to understand how a woman whose accupation is said to be agricultural labourer can afford to bring so much of rice and wheat, the total price of which is Rs.40-1-6. We are satisfied that the case is one of black-marketing. We think that the sentences which have been

imposed by the Magistrate upon the accused are inadequate. The sentence is one of fine and we think that under the circumstances the sentence should be one of imprisonment.

We therefore sentence accused No.1 to suffer rigorous imprisonment for a period of two months in addition to the fine already imposed upon him and we sentence accused No. 2 suffer simple imprisonment for a period of 1½ months in addition to the sentence of fine imposed upon her by the learned Magistrate.

The rule is made absolute.

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Judgment recorded by the High Court in Criminal Revision Application No. 289 of 1947, by the Government of the Province of Bombay, in the case of Imperator Vs. Shripad Anrappa Pothari.

Mr. J. R. Madbhavi, Advocate, for the accused.
The Government Pleader for the applicant,
The Government of the Province of Bombay.

Coram: Sen and Gajendragadkar, JJ.
12th September 1947.

Oral Judgment per Gajendragadkar, J. :-

In this case the accused was charged with having committed a breach of Government Notification (Finance Supply) 31 C dated the 22nd December 1944. He was required to declare the stock of gur in the month of June 1946 and he failed to make such a declaration. At the trial he pleaded guilty. The learned Magistrate accordingly considered the evidence took into account the plea of guilty made by the accused and convicted him of the offence under rule 81(4) of the Defence of India Rules. He, however, took the view that a fine of Rs. 150/- or in default rigorous imprisonment for one month would be adequate punishment in the circumstances of this case. It is against this order that the present application for enhancement has been made by the Province of Bombay.

The order of conviction passed by the learned Magistrate appears to-us to be obviously right. The evidence clearly shows t at the accused did not make a declaration and in fact he had pleaded guilty. The circumstances referred to by the learned Magistrate as extenuating circumstances in this case, viz. that the accused is a poor man and that the quality of the gur was not very good &x do not however, justify the imposition of mere fine of Rs. 150/- against the accused.

We therefore direct that the accused should undergo rigorous imprisonment for one month and pay a fine of Rs. 150/- or in default undergo further rigorous imprison-ment for one month. The application for enhancement is accordingly allowed and the rule is made absolute.

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Judgment recorded by the High Court in Criminal Revision Application No.290 of 1947 in the Case of Emperor Vs. Muttappa Kenchappa accused No. 1.

The Government Pleader for the Crown.

Mr.P.V.Vaze appointed for the accused.

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Coram: Sen and Dixit JJ.

27th August 1947.

Oral Judgment (Per Sen J.) : This is an application by the Government of the Province of Bombay for enhancement of the sentence passed on accused No.1 Muttappa Kenchappa who along with another was tried for an offence punishable under Rule 81(of the Defence of India Rules in that they contravened the order of the District Magistrate, No. M.A.R.64 dated 11.5.1945 made under Rule 81(2) of the said Rules. That order prohibited the transport beyond a limited quantity of certain food grains which included jwari and bajri, out of British India.

The case against the accused was that on the 14th July 1946 accused Nos. 1 and 2 who are both residents of Mantur were seen going with a cart loaded with six bags of grain- four bags of jwari and two bags of bajri towards Mantur and that when the police patil was brought there they admitted that they were carrying the bags to Mantur in Kolhapur State. Mantur is six or seven miles from Durdundi within the limits of which the cart containing the bags in question was seized. According to the prosecution the cart was first seen by witness Sidram and three other persons, Mallappa, Anaya and Jayaram who were going to another village early in the morning from Durdundi. They intended to find out if they could get the use of the said cart for going to their destination viz. village Mudalgi. The cart was stopped and accused No.1 who was in the cart got down and told them that they were going to Mantur. Then Sidram and Mallappa went to the Patil and brought him there. The Patil again learnt from the accused

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the a cused that the bags were being taken to Mantur. He took the cart to Gokak and had a panchanama made. Evidence has been given on behalf of the prosecution by the Police Patil, Sidram and two other witnesses Ayaga and Bheema, Exs. 2 and 3 , who however turned hostile and were cross-examined as hostile witnesses. What these two witnesses stated was that they learnt from accused No.1 that he had borrowed the corn and was going to take it to the house of one of his relations. One of them, Bheema, admits that the road in front of his house, where the cart was stopped goes direct to Mantur. The Police patil as well as Sidram have given evidence regarding the District Magistrate's Order having been published in the village 2 or 3 times, and neither this statement made by the police patil nor his statement that the accused said that they were carrying the grain to Mantur has been subjected to any cross -examination, there being no cross-examination of the police patil at all.

Both the accused said that they were not guilty - and put in written statements in support of which they examine d four witnesses. The story that they gave is that 4 or 5 years ago accused No.1 had given loan of some grain consisting of wari and maize of Lakapa and Yamanapa, that Bhimapa, one of the defence witnesses, had arranged to get the grain which was returned by these two men to be lent to him by accused No.1 and that accordingly accused No.1 after getting returned the grain that he had lent to the said two persons brought the grain in bags in a cart up to Bhimapa's house and that the cart was stopped by Sidram who later on called the police patil. Bhimapa, Lakapa and Yamanappa have all been examined for the defence. It is to be noted that whereas the two prosecution witnesses who have turned hostile allege that they learnt from accused No.1 that he had borrowed the grain in question and was carrying it to the house of one of his relations, the story given by the defence witnesses is - different, in that according to them Bhimapa was taking the

taking the bags of grain which had been returned to accused No.1 by Lakapa and Yamanapa. It seems to us difficult to accept the story that Lakapa and Yamanapa had returned the loan of grain which they had taken as long as 4 or 5 years ago. The statement made by Bhimapa that the bags were brought up to his house does not, again, appear to be true, as according to Sidram and the police patil the cart was stopped on the road, practically outside the limits of the village. Again, Bhimapa has alleged that the police patil asked for Rs.50/- as his bakshis. No question on this point was put in the cross-examination of the police patil and this allegation seems to be a pure fabrication. Bhimapa has admitted that he is related to accused No.1. The second witness for the defence, Peerapa is a cooly and he alleges that when he asked Sidram to release the cart he told Sidram that Bhimapa had taken loan of corn from accused No.2, which again, is a story different from that put forward by the other defence witnesses. How he came to know of the arrangement entered into by Bhimapa with one of the accused persons is not clear and he has made no statement regarding it. In our opinion he is as unreliable a witness as Bhimapa. Then we come to the other two witnesses, Lakapa and Yamanapa, who are said to have borrowed grain from accused No.1. Both of them allege that each had taken two bags of jwari and one bag of maize 4 or 5 years ago. It is curious, however, that neither of them returned any part of the maize, but, if they are to be believed, bajri was returned instead. Lakapa has stated that no interest was settled for the loan of corn and yet he says that he gave two solgis as interest. The other man, Yamanpa, has clearly stated that he had not given any interest at all. It is unlikely that if corn had remained unpaid for such a long period, accused No.1 would not demand the addition of a certain quantity of grain by way of interest; and it seems to us difficult to accept the story put forward by the defence witnesses regarding the loan given four or five years before the date of the incident.

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The learned Magistrate thought that the guilt of accused No.1 was established by the evidence of the police patil and Sidram and that accused No.2, the driver of the cart, was innocent. Accordingly, he convicted accused No.1 of the offence of attempting to export grain beyond the limits of British India, though there is no mention of Rule 121 of the Defence of India Rules in the charge. He rightly held that the absence of that Rule in the charge did not prejudice the accused. We think that the learned Magistrate was right in believing the evidence of Sidram and the police patil and in rejecting the defence evidence. There can be no doubt that the grain in question was being taken by accused No.1 in the cart of accused No.2 to his own village, i.e. outside British India. In our opinion, the sentence that was passed, viz. Only a fine of Rs.150/- is altogether inadequate, seeing that the object of accused No.1 must have been to deal in the blackmarket, or if there be no blackmarket in the Kolhapur State, to remove a quantity of grain illegally from the limits of British India. On either view the offence is too serious to merit merely a fine of Rs.150/-

We, therefore, enhance the sentence to six months' rigorous imprisonment and a fine of Rs.150/- and in default of payment of fine, further rigorous imprisonment for three months.

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Judgment recorded by the High Court in Criminal Revision Application No. 287 of 1947 (By Govt.) in the case of Imperator Vs. Patreppa Basappa Koliyawar No. 1 and another.

The Government Pleader for the Government of the Province of Bombay.

Mr. N. M. Hungund for the accused (appointed).

Coram:- Sen and Dixit JJ

26th August 1947

Oral Judgment (Per Sen J.):--

This is an application of the Government of the Province of Bombay for enhancement of the sentences passed o the two accused in this case who have been convicted under Rule 81(4) of the Defence of India Rules for contravention of the order of the District Magistrate, Belgaum No. WAR 64 dated 11th May 1945. The sentence passed in the case of each of the accused is fine of Rs. 100 or in default rigorous imprisonment for two months. The order of the District Magistrate just referred to prohibited the transport of food-grains exceeding 4 seers from one village to another in the district without a permit. That order was published in t Bombay Government Gazette, wherein the mode publication desired by the District Magistrate also mentioned. The mode which which appertained to the publication of the order in villages was by the beat of drum by the Mahar or the Valikar The evidence in this case is that on the 8th August 1946 whe a bazaar was being held at the village of Munawalli, the complainant, a Head Constable, who was present at the bazaar saw the accused at about 3-30 p.m. getting down from a boat with one bag of wheat each. On the accused being questioned they stated that they had brought the wheat bag from the village of Basidoni, which is at a distance of about 10 mile from Munawalli. Accused No. 1 had 45½ seers of wheat in his bag while accused No. 2 had 39½ seers of wheat with him. The

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Head Constable attached the bags of wheat and after registering the offence produced the accused and the articles seized before the Police Sub Inspector with his report. A panchanama was made regarding the wheat found to be carried by the two accused and the panch has been examined as a witness. The most important witness for the prosecution is the Kulkarni of the village of Basidoni. He has stated that he has been officiating as the Kulkarni of Basidoni for the last 4½ years and that he published the order of the District Magistrate which he received from the Mamlatdar by the beat of drum and also by affixing it to the notice board of the chavdi, on the 10th June 1945. He has further stated that he published also a printed press note which was issued by Government on the subject on the 3rd September 1945 by the beat of drum and that he had informed the Mamlatdar that he had published both the orders and the press note. Accused No. 1 said that he had transported wheat from Basidoni for the purpose of sowing the land taken by him as a tenant at Munawalli from one Gowdrappa Dyanappagol of the said village and that the orders of the District Magistrate had not been published in his village by the Kulkarni. Similarly, accused No. 2 stated that he had taken wheat for sowing the field at Munnavalli which had been taken by him and accused No. 1 from Gowdrappa Dyanappagol and he also stated that the order had not been published in the village. The learned Magistrate believed the evidence of the Kulkarni that he had published the order banning the transport of food-grains without permit and he disbelieved the statement of the accused that they had been carrying the wheat for the purpose of sowing it in the land mentioned by them. The extract of the Record of Rights shows the names of two accused as tenants in survey No. 327/4 which measures 3 acres and 36 gunthas. There is some evidence to show that 60 seers of wheat would be required for sowing a field of

about 4 acres. The question whether the wheat was being taken for the purpose of ~~xxx~~ sowing would be material only to the sentence to be passed on the accused if they are found guilty; because even if wheat was taken for the purpose of sowing and if there was not permit for the transport of the wheat, that would not constitute any justification for contravening the order of the District Magistrate. Mr. Hungund has strongly argued that in this case the evidence of the Kulkarni that he published the order in the manner required should not have been believed by the trial Court. The order required that the Mamlatdar or the Mahalkari should publish it by the beat of drum. One might ordinarily expect that the order would be sent for publication in such manner to the villages in the Talukas concerned; and the Kulkarni has no doubt stated in his examination-in-chief that he published the order in question on the 10th June 1945 not only by the beat of drum but also by affixing it on the notice board of the chavdi. He has also stated in his examination-in-chief that he published the press note on 3rd September 1945 by the beat of drum, and has further stated that he reported to the Mamlatdar the fact that the order of the District Magistrat and the press note had been published by him. In cross-examination however, he has made certain important admissions. He was first asked whether there was any dakhla about his having signed the report of the Mamlatdar. To this he gave a negative reply. Thereupon he was asked whether there is a Jawak Barnishi in which the purport of the outgoing paper is noted. He answered this question in the affirmative. He was next asked whether there was any dakhla about the receipt of the order in question. To that he gave a negative reply, and thereafter added, in answer to a further

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question, that he has also an Awak Register for noting the receipt of papers. Though in examination-in-chief he stated that he published the press note on the 3rd September 1945 and had endorsed thereon the fact of the publication, in cross-examination he said, that he did not report to the Taluka office the publication of the press note as he was not asked to report on this point. As to the receipt of the press note, again, he admitted that he had not maintained a dakhla. It seems to us clear that the so-called dakhla was intended to mean a note to show either the receipt or the despatch of a document or report. When, therefore, the witness admitted clearly that he had no dakhla either about the receipt of the order or about his having sent a report of the publication or about the receipt of the press note, that answer must have been intended to include any notes made in his Jawak of Awak Register, wherein ordinarily the receipt of papers or the despatch of any report or paper is expected to be entered. This witness has been a Kulkarni of the village for 4½ years and normally one would expect that records or papers received at or despatched from the village by him would be noted in the proper Register, and the learned Advocate for the applicants was perfectly entitled to rely on the answers given by the witness in his cross-examination. This witness has further stated that all control orders were received by him and that he used to send them to the Police Patil and that he and the Police Patil executed the control orders; also that the order in question was published by him and the Police Patil and that the order was published by the beat of drum by a Mahar. On further questioning he admitted that he did not remember which particular Mahar published the order. We are not satisfied that the order was published by the beat of drum by a particular Mahar or Valikar. The Kulkarni would be ordinarily expected to remember the Mahar or Valikar in

question although there had been a lapse of a year and a half since June 1945. It is not clear to us how it was possible for the witness to remember the exact date of the receipt of the order and the publication thereof, namely, 10th June 1945. According to the witness the original order was affixed to the notice board of the chavdi but it was destroyed due to wind and rain. That might have happened, but if there was no dakhla at all about the order or the press-no in the Barnishi or the registers kept by the witness he has not made it clear whether there were other papers or documents showing the date 10th June 1945. In view of the nature of the replies given by this witness, the Kulkarni of the village, supposing that the admissions made by him were not correct or in making the statements about the dakhla he made a mistake as to its actual meaning, as has been suggeste by the learned Government Pleader, it was open to the prosecution to get the matter cleared up by the other witnes like the Police Patil, the Mahar or the Valikar or one of the villagers who heard the beat of drum and was present when the order in question was published in the manner required. That was not done. It is, therefore, difficult to reach the conclusion that the prosecution have been able to rebut or to meet the considerable, and reasonable, doubt that arises from the evidence of the Kulkarni of Basidoni in his cross-examina- tion as to the order in question having been despatched to, o been published in, the said village. It was necessary that th prosecution should lead positive evidence that the order in question had been published in the manner required by the ord itself; and it seems to us, as has been held in cases already decided, that it is not open to the prosecution to rely, on a point like that, on any presumption under the provisions of Section 114 of the Indian Evidence Act. In certain cases it i possible to dispense with evidence regarding the publica- tion of the order of this nature. It does not seem to us

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that such was the case here. There is no evidence at all suggesting that the accused might have known the order apart from the statutory effect of publication under Rule 119 of the Defence of India Rules. We think the fact that accused were found to be bringing wheat in two bags in the afternoon on a bazaar day at Munawalli rather suggests that they could not have been aware of the order in question. As we are not satisfied that the said order was published in the village to which the accused belong in the manner required by the order itself that is, by the beat of drum, we think that the accused are entitled to the benefit of such finding and therefore to acquittal. The conviction of the two accused, therefore, under Rule 81(4) of the Defence of India Rules and the sentence passed on them are set aside and they are acquitted and discharged. Fines, if paid, to be refunded. The learned Magistrate has ordered that the sale proceeds of the grain sold should be credited to Government. We set aside this order also and direct that the said sale proceeds should be paid to the accused. In case any part of the grain is not sold it should also be returned to the accused.

.....oOo.....

CNA/-

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385 1947

Judgment recorded by the High Court in Criminal Revision Application No. 287 of 1947 (By Govt.) in the case of Imperator Vs. Patreppa Basappa Koliyawar No. 1 and another.

The Government Pleader for the Government of the Province of Bombay.

Mr. N. M. Mungund for the accused (appointed).

Coram:- Sen and Dixit JJ.

26th August 1947.

Oral Judgment (Per Sen J.):--

This is an application of the Government of the Province of Bombay for enhancement of the sentences passed on the two accused in this case who have been convicted under Rule 81(4) of the Defence of India Rules for contravention of the order of the District Magistrate, Belgaum No. WAR 64 dated 11th May 1946. The sentence passed in the case of each of the accused is fine of Rs. 100 or in default rigorous imprisonment for two months. The order of the District Magistrate just referred to prohibited the transport of food-grains exceeding 4 seers from one village to another in the district without a permit. That order was published in the Bombay Government Gazette, wherein the mode publication desired by the District Magistrate also mentioned. The mode which which appertained to the publication of the order in villages was by the beat of drum by the Mahar or the Valikar. The evidence in this case is that on the 8th August 1946 when a bazaar was being held at the village of Munawalli, the complainant, a Head Constable, who was present at the bazaar, saw the accused at about 3-30 p.m. getting down from a boat with one bag of wheat each. On the accused being questioned they stated that they had brought the wheat bag from the village of Basidoni, which is at a distance of about 10 miles from Munawalli. Accused No. 1 had 45½ seers of wheat in his bag while accused No. 2 had 39½ seers of wheat with him. The

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Head Constable attached the bags of wheat and after registering the offence produced the accused and the articles seized before the Police Sub Inspector with his report. A panchanama was made regarding the wheat found to be carried by the two accused and the panch has been examined as a witness. The most important witness for the prosecution is the Kulkarni of the village of Basidoni. He has stated that he has been officiating as the Kulkarni of Basidoni for the last 4½ years and that he published the order of the District Magistrate which he received from the Mamlatdar by the beat of drum and also by affixing it to the notice board of the chavdi, on the 10th June 1945. He has further stated that he published also a printed press note which was issued by Government on the subject on the 3rd September 1945 by the beat of drum and that he had informed the Mamlatdar that he had published both the orders and the press note. Accused No. 1 said that he had transported wheat from Basidoni for the purpose of sowing the land taken by him as a tenant at Munawalli from one Gowdrappa Dyanappagol of the said village and that the orders of the District Magistrate had not been published in his village by the Kulkarni. Similarly, accused No. 2 stated that he had taken wheat for sowing the field at Munnavalli which had been taken by him and accused No. 1 from Gowdrappa Dyanappagol and he also stated that the order had not been published in the village. The learned Magistrate believed the evidence of the Kulkarni that he had published the order banning the transport of food-grains without permit and he disbelieved the statement of the accused that they had been carrying the wheat for the purpose of sowing it in the land mentioned by them. The extract of the Record of Rights shows the names of two accused as tenants in survey No. 327/4 which measures 3 acres and 36 gunthas. There is some evidence to show that 60 seers of wheat would be required for sowing a field of

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about 4 acres. The question whether the wheat was being taken for the purpose of ~~xxx~~ sowing would be material only to the sentence to be passed on the accused if they are found guilty; because even if wheat was taken for the purpose of sowing and if there was not permit for the transport of the wheat, that would not constitute any justification for contravening the order of the District Magistrate. Mr. Hungund has strongly argued that in this case the evidence of the Kulkarni that he published the order in the manner required should not have been believed by the trial Court. The order required that the Mamlatdar or the Mahalkari should publish it by the beat of drum. One might ordinarily expect that the order would be sent for publication in such manner to the villages in the Talukas concerned; and the Kulkarni has no doubt stated in his examination-in-chief that he published the order in question on the 10th June 1945 not only by the beat of drum but also by affixing it on the notice board of the chavdi. He has also stated in his examination-in-chief that he published the press note on 3rd September 1945 by the beat of drum, and has further stated that he reported to the Mamlatdar the fact that the order of the District Magistrate and the press note had been published by him. In cross-examina-tion~~xxx~~ however, he has made certain important admissions. He was first asked whether there was any dakhla about his having signed the report of the Mamlatdar. To this he gave a negative reply. Thereupon he was asked whether there is a Jawak Barnishi in which the purport of the outgoing papers is noted. He answered this question in the affirmative. He was next asked whether there was any dakhla about the receipt of the order in question. To that he gave a negative reply, and thereafter added, in answer to a further

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question, that he has also an Awak Register for noting the receipt of papers. Though in examination-in-chief he stated that he published the press note on the 3rd September 1946 and had endorsed thereon the fact of the publication, in cross-examination he said, that he did not report to the Taluka office the publication of the press note as he was not asked to report on this point. As to the receipt of the press note, again, he admitted that he had not maintained a dakhla. It seems to us clear that the so-called dakhla was intended to mean a note to show either the receipt or the despatch of a document or report. When, therefore, the witness admitted clearly that he had no dakhla either about the receipt of the order or about his having sent a report of the publication or about the receipt of the press note, that answer must have been intended to include any notes made in his Jawak of Awak Register, wherein ordinarily the receipt of papers or the despatch of any report or paper is expected to be entered. This witness has been a Kulkarni of the village for 4½ years and normally one would expect that records or papers received at or despatched from the village by him would be noted in the proper Register, and the learned Advocate for the applicants was perfectly entitled to rely on the answers given by the witness in his cross-examination. This witness has further stated that all control orders were received by him and that he used to send them to the Police Patil and that he and the Police Patil executed the control orders; also that the order in question was published by him and the Police Patil and that the order was published by the beat of drum by a Mahar. On further questioning he admitted that he did not remember which particular Mahar published the order. We are not satisfied that the order was published by the beat of drum by a particular Mahar or Vâlikar. The Kulkarni would be ordinarily expected to remember the Mahar or Valikar in

113 C.J. 54

question although there had been a lapse of a year and a half since June 1946. It is not clear to us how it was possible for the witness to remember the exact date of the receipt of the order and the publication thereof, namely, 10th June 1945. According to the witness the original order was affixed to the notice board of the chavdi but it was destroyed due to wind and rain. That might have happened, but if there was no dakhla at all about the order or the press-note in the Barnishi or the registers kept by the witness he has not made it clear whether there were other papers or documents showing the date 10th June 1945. In view of the nature of the replies given by this witness, the Kulkarni of the village, supposing that the admissions made by him were not correct or in making the statements about the dakhla he made a mistake as to its actual meaning, as has been suggested by the learned Government Pleader, it was open to the prosecution to get the matter cleared up by the other witnesses like the Police Patil, the Mahar or the Valikar or one of the villagers who heard the beat of drum and was present when the order in question was published in the manner required. That was not done. It is, therefore, difficult to reach the conclusion that the prosecution have been able to rebut or to meet the considerable, and reasonable, doubt that arises from the evidence of the Kulkarni of Basidoni in his cross-examination as to the order in question having been despatched to, or been published in, the said village. It was necessary that the prosecution should lead positive evidence that the order in question had been published in the manner required by the order itself; and it seems to us, as has been held in cases already decided, that it is not open to the prosecution to rely, on a point like that, on any presumption under the provisions of Section 114 of the Indian Evidence Act. In certain cases it is possible to dispense with evidence regarding the publication of the order of this nature. It does not seem to us

that such was the case here. There is no evidence at all suggesting that the accused might have known the order apart from the statutory effect of publication under Rule 119 of the Defence of India Rules. We think the fact that accused were found to be bringing wheat in two bags in the afternoon on a bazaar day at Munawalli rather suggests that they could not have been aware of the order in question. As we are not satisfied that the said order was published in the village to which the accused belong in the manner required by the order itself that is, by the beat of drum, we think that the accused are entitled to the benefit of such finding and therefore to acquittal. The conviction of the two accused, therefore, under Rule 81(4) of the Defence of India Rules and the sentence passed on them are set aside and they are acquitted and discharged. Fines, if paid, to be refunded. The learned Magistrate has ordered that the sale proceeds of the grain sold should be credited to Government. We set aside this order also and direct that the said sale proceeds should be paid to the accused. In case any part of the grain is not sold it should also be returned to the accused.

.....oOo.....

CNA/-

Judgment recorded by the High Court in Criminal Revision Application No. 289 of 1947 (By Govt.) in the case of Imperator Vs. Shripad Annappa Hothari.

Mr. G.R.Madbhavi, Advocate, for the accused.
The Government Pleader for the applicant.
The Government of the Province of Bombay.

Coram:- Sen and Gajendragadkar J.

12th September 1947.

Oral Judgment per Gajendragadkar J. :--

In this case the accused was charged with having committed a breach of Government Notification (Finance Supply) 31 C dated the 22nd December 1944. He was required to declare the stock of gur in the month of June 1946 and he failed to make such a declaration. At the trial he pleaded guilty. The learned Magistrate accordingly considered the evidence took into account the plea of guilty made by the accused and convicted him of the offence under r. 81(4) of the Defence of India Rules. He, however, took the view that a fine of Rs. 150/- or in default rigorous imprisonment for one month would be adequate punishment in the circumstances of this case. It is against this order that the present application for enhancement has been made by the Province of Bombay.

The order of conviction passed by the learned M Magistrate appears to us to be obviously right. The evidence clearly shows that the accused did not make a declaration and in fact he had pleaded guilty. The circumstances referred to by the learned Magistrate as extenuating circumstances in this case, viz., that the accused is a poor man and that the quality of the gur was not very good do not, however, justify the imposition of mere fine of Rs. 150/- against the accused.

We therefore direct that the accused should undergo rigorous imprisonment for one month and pay a fine of Rs.150/- or in default undergo further rigorous imprisonment for one month. The application for enhancement is accordingly allowed and the rule is made absolute.

CNA/-

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Judgment recorded by the High Court in Criminal Revision Application No. 289 of 1947 (By Govt.) in the case of Imperator Vs. Shripad Annappa Mothari.

Mr. G.R.Madbhavi, Advocate, for the accused.
The Government Pleader for the applicant.
The Government of the Province of Bombay.

Coram:- Sen and Gajendragadkar J.

12th September 1947

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CNA/-

Jmkdi. P. P.—(J) J 11—2000—6-49
G. O., L. D., No. 1193 dated 7-12-15

[Spl.—Govt. pl. H. C., Bom. 8 e.

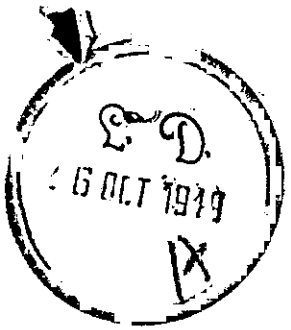
No. 5231

From

THE GOVERNMENT PLEADER, HIGH COURT,
Bombay;

To

The Secretary to Government. Legal Department.
~~The Collector of~~
~~The District Magistrate of~~



Bombay, 26-10-1949.

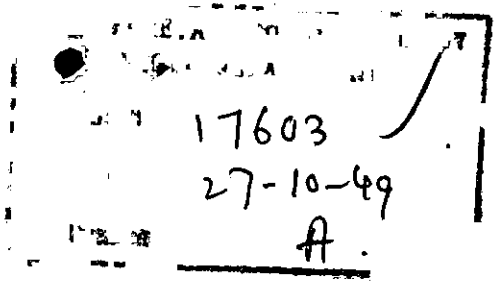
Sir,

With reference to ~~this office letter~~ No. 4339 G.R.L.D., dated 29-4-1947,

(Cri. Revn ~~Appeal~~ Application No. 286 of 1947 (By Govt)

TWO (2) Certified copies of High Court Jugment ~~and Decree.~~

I have the honour to ~~forward~~ return herewith papers in the case as noted in the margin, ~~and to request the favour of your acknowledging the receipt thereof.~~



I have the honour to be,
Sir,
Your most obedient Servant.

By Mhatre

for Government Pleader, High Court,

Judgment recorded by the High Court in Criminal Revision Application No. 286 of 1947 (By Govt.) in the case of Imperator Vs. Abba Mahomed No. 1.

The Government Pleader for the petitioner.

Mr. K. R. Bengeri, Advocate, (appointed) for the accused.

Coram:- Chagla C.J. and Gajendragadkar J.

9th December 1947.

Oral Judgment per Chagla C.J. :-

This is not a case for the enhancement of the sentence. The accused was convicted for removing 296 seers of jowar from Rajapur to Borgaon without a license. The Police Sub-Inspector admitted in his cross-examination that this grain was being taken by the accused for his maintenance and it was not a case of black marketting.

The application is dismissed.

CNA/-

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Judgment recorded by the High Court in Criminal Revision Application No. 288 of 1947 (By Government) in the case of Imperator Vs. Mayappa Bhimappa Kutturavar No. 1 and another No. 2.

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The Government Pleader for the Government of the Province of Bombay;

Mr. M.F.M.Reddi, Advocate, appointed for the accused.

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Coram: Sen and Dixit JJ.

26th August 1947.

Oral Judgment Per Dixit J. :--

This is an application for enhancement of the sentences passed upon the accused by the Resident Magistrate, First Class, Bail-Hongal, in criminal case No. 407 of 1946. The facts are not seriously in dispute.

Accused No. 1 is a resident of the village Saundatti; accused No. 2 is also a resident of the same place and her occupation is that of an agricultural labourer. Accused No. 1 has a cart and the prosecution story is that on August 9, 1946, 5 half bags of rice measuring 147 seers and 1 half bag of wheat measuring 25 seers were transported by accused No. 2 from Inam Hongal to Saundatti without a permit in the cart of accused No. 1. Accused No. 1 was therefore prosecuted for an offence punishable under Rule 81(4) read with Rule 121 of the Defence of India Rules and accused No. 2 was prosecuted for an offence punishable under Rule 81(4) of the Rules. Originally there were in all five accused but accused Nos. 3 to 5 were discharged by the Magistrate. Both the accused, that is, accused Nos. 1 and 2 pleaded guilty to the charge.

Accused No. 1 stated that he had gone to Inam Mongal to bring Kadbi for his bullocks and that while he was returning he put up accused Nos. 2 to 5 in his ~~xxx~~ cart and as accused No. 2 stated that the bags contained grains he did not further ask her what the grains were. Accused No. 2 stated that she did not know that a permit was required for bringing rice and wheat, and that as she had settled the marriage of her son she had brought the rice and wheat in the cart of accused No. 1. It is to be noted that the articles transported are large, in all 5 half bags containing 147 seers of rice and 1 half bag containing 25 seers of wheat. It is also to be noted that there were in the cart five persons including accused Nos. 1 and 2. The learned Magistrate took the view that this was a clever ~~device~~ device on the part of the accused No. 2 to distribute the rice into as ~~many~~ many bags as possible, and this lent support to the theory that accused No. 2 had purposely divided the quantity into smaller units. He observed in the course of his judgment that the prosecution ~~did~~ did not rely upon the fact that accused No. 2 was proved to be a black-marketeer in food-grains. In the result he convicted accused No. 1 and sentenced him to pay a fine of Rs. 50/- in default rigorous imprisonment for one month. He also convicted accused No. 2 and sentenced her to pay a fine of Rs. 150/- in default rigorous imprisonment for three months.

Upon this application for ~~xxx~~ enhancement of the sentences the learned Government Pleader says that this is a clear case of black-marketing. As I have already stated, the occupation of accused No. 2 is described in her statement as that of an agricultural labourer. It appears that the sale proceeds came to Rs. 40-1-6. It is the case of the second accused

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that she wanted this rice and wheat for the purpose of the marriage of her son. There is no evidence as to whether the marriage was performed. The only inference therefore is that she purchased these bags of rice and wheat for the purpose of black-marketing and for nothing else. It is difficult to understand how a woman whose occupation is said to be agricultural labourer can afford to bring so much of rice m and wheat, the total price of which is Rs. 40-1-6. We are satisfied that the case is one of black-marketing. We think that the sentences which have been imposed by the Magistrate upon the accused are inadequate. The sentence is one of fine and we think that under the circumstances the sentence should be one of imprisonment.

We therefore sentence accused No. 1 to suffer rigorous imprisonment for a period of two months in addition to the fine already imposed upon him and we sentence accused No. 2 to suffer simple imprisonment for a period of 1 1/2 months in addition to the sentence of fine imposed upon her by the learned Magistrate.

The rule is made absolute.

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CNA/-

Accused No. 1 stated that he had gone to Inam Mongal to bring Kadbi for his bullocks and that while he was returning he put up accused Nos. 2 to 6 in his car cart and as accused No. 2 stated that the bags contained grains he did not further ask her what the grains were. Accused No. 2 stated that she did not know that a permit was required for bringing rice and wheat, and that as she had settled the marriage of her son she had brought the rice and wheat in the cart of accused No. 1. It is to be noted that the articles transported are large, in all 5 half bags containing 147 seers of rice and 1 half bag containing 25 seers of wheat. It is also to be noted that there were in the cart five persons including accused Nos. 1 and 2. The learned Magistrate took the view that this was a clever device on the part of the accused No. 2 to distribute the rice into as many bags as possible, and this lent support to the theory that accused No. 2 had purposely divided the quantity into smaller units. He observed in the course of his judgment that the prosecution did not did not rely upon the fact that accused No. 2 was proved to be a black-marketeer in food-grains. In the result he convicted accused No. 1 and sentenced him to pay a fine of Rs. 50/- in default rigorous imprisonment for one month. He also convicted accused No. 2 and sentenced her to pay a fine of Rs. 150/- in default rigorous imprisonment for three months.

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CRA/-

Judgment recorded by the High Court in Criminal Appeal No.424 of 1949 (By Govt.) in the case of Rex. vs. Baswanni Parsappa Satiyanaik, No.4.

497

The Government Pleader for the Crown.

Mr.D.M.Honavar, Advocate for the accused.

Coram: Rajadhyaksha & Chainani, JJ.

15th December 1949.

Oral Judgment (per Rajadhyaksha, J.).

We have now received the finding from the Additional Sessions Judge, Belgaum, which shows that the accused is more than 21 years of age, and if the extract from the Birth and Death Register is to be believed, the accused is now 25 years of age. The Civil Surgeon also says that the accused is about 21 years of age. It is therefore clear that the accused cannot be given the benefit of the Bombay Borstal Schools Act. As we have held that the conviction of the accused under section 302 read with section 114 of the Indian Penal Code is correct we must sentence the accused to transportation for life.

We, however, recommend to Government that his sentence should be substantially commuted. He took a very minor part in this affair, and so far as the evidence goes, he merely stood by and prevented labourers from intervening, while the three others who were primarily responsible for the offence actually committed murder. He is a young boy of 21, and we think that having regard to the very minor part which he took in this matter, a sentence of rigorous imprisonment for three years ought to suffice. We accordingly make a recommendation to that effect to the Provincial Government.

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Judgment recorded by the High Court in Criminal Appeal No.424 of 1949 (By Govt.) in the case of Rex. vs. Baswanni Parsappa Satiyanaik, No.4.

497

The Government Pleader for the Crown.

Mr.D.M.Honavar, Advocate for the accused.

Coram: Rajadhyaksha & Chainani, JJ.

15th December 1949.

Oral Judgment (per Rajadhyaksha, J.).

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Coram: Rajadhyaksha & Chainani, JJ.

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Judgment recorded by the High Court in Criminal Appeal No.424 of 1940 (By Govt.) in the case of Rex. vs. Basvanni Parsappa Satiyanaik, No.4.

The Government Pleader for the Crown.
Mr.B.M.Menavary, Advocate for the accused.

Coram: Rajadhyaksha & Chainani, JJ.

15th December 1940.

Oral Judgment (per Rajadhyaksha, J.):

We have now received the finding from the Additional Sessions Judge, Belgaum, which shows that the accused is more than 21 years of age, and if the extract from the Birth and Death Register is to be believed, the accused is now 25 years of age. The Civil Surgeon also says that the accused is about 21 years of age. It is therefore clear that the accused cannot be given the benefit of the Bombay Borstal Schools Act. As we have held that the conviction of the accused under section 302 read with section 114 of the Indian Penal Code is correct, we must sentence the accused to transportation for life.

We, however, recommend to Government that his sentence should be substantially commuted. He took a very minor part in this affair, and so far as the evidence goes, he merely stood by and prevented labourers from intervening, while the three others who were primarily responsible for the offence actually committed murder. He is a young boy of 21, and we think that having regard to the very minor part which he took in this matter, a sentence of rigorous imprisonment for three years ought to suffice. We accordingly make a recommendation to that effect to the Provincial Government.

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Judgment recorded by the High Court in Criminal Appeal No.426 of 1949 (By Govt.) in the case of Rex vs. Basvanni Parsappa Satiyannik, No.4.

The Government Pleader for the Crown.
Mr.D.M.Honavar, Advocate for the accused

Coram: Rajadhyaksha & Chainani, JJ.

16th December 1949.

Oral Judgment (per Rajadhyaksha J.):

We have now received the finding from the Additional Sessions Judge, Belgaum, which shows that the accused is more than 21 years of age, and if the extract from the Birth and Death Register is to be believed, the accused is now 25 years of age. The Civil Surgeon also says that the accused is about 21 years of age. It is therefore clear that the accused cannot be given the benefit of the Bombay Borstal Schools Act, as we have held that the conviction of the accused under sect 302 read with section 114 of the Indian Penal Code is correct we must sentence the accused to transportation for life.

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Judgment recorded by the High Court in Criminal Appeal No.494 of 1940 (By Govt.) in the case of Rex. vs. Saravanai Paranppa Sathyanaik, No.4.

The Government Pleader for the Crown.
Mr.B.H.Hanavar, Advocate for the accused.

Coram: Rajadhyaksha & Chainani, J.J.

15th December 1940.

Oral Judgment (per Rajadhyaksha, J.):

We have now received the finding from the Additional Sessions Judge, Belgaum, which shows that the accused is more than 21 years of age, and if the extract from the Birth and Death Register is to be believed, the accused is now 25 years of age. The Civil Surgeon also says that the Accused is about 21 years of age. It is therefore clear that the accused cannot be given the benefit of the Bombay Borstal Schools Act. As we have held that the conviction of the accused under section 302 read with section 114 of the Indian Penal Code is correct, we must sentence the accused to transportation for life.

We, however, recommend to Government that his sentence should be substantially commuted. He took a very minor part in this affair, and so far as the evidence goes, he merely stood by and prevented labourers from intervening, while the three others who were primarily responsible for the offence actually committed murder. He is a young boy of 21, and we think that having regard to the very minor part which he took in this matter, a sentence of rigorous imprisonment for three years ought to suffice. We accordingly make a recommendation to that effect to the Provincial Government.

Copy.

Judgment recorded by the High Court in Criminal Revision Application Nos.780 and 781 of 1949 (By Govt.) in the case of Rex vs. Raojibhai Govindbhai, No.1 and another No.2 and Maganbhai Motibhai No.1 and others Nos.2 and 3.

The Government Pleaer for the Crown.

Mr.B.K.Amin, with Mr.V.H.Kamat, Advocate for Accused No.1 | In Criminal Revn. Appln.No.780 of 1949 (By Govt.)

Mr.R.M.Shah, Advocate for Accused No.2. |

Mr.C.S.Trivedi, Advocate (appointed) for the Accused. | In Crim.Rev.Appln. No.781 of 1949(By Govt)

CORAM: Rajadhyaksha and Chainani, JJ.

15th December 1949.

Oral Judgment (per Rajadhyaksha J.) :-

These are two applications in revision filed by the Government of the Province of Bombay asking for enhancement of setences passed upon the accused. Under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, the Provincial Government had power of regulating or prohibiting the distribution of various articles coming under the category of essential commodities mentioned in schedule (1) to that Act. Originally that Schedule did not contain "oil engines" as one of the items of "essential commodities". But by an amending Act dated the 30th September 1947, the category of 'oil engines" was added to the first schedule and on the same date a notification was issued in the Bombay Government Gazette No.4110-B/IV, under which the Provincial Government directed that "no person shall sell or give on hire or otherwise dispose of any of the essential commodities mentioned in the notification". One of the commodities mentioned in the notification is "oil engines having horse power of 5 and over but not exceeding 60."

The prosecution case was that in disobedience of this notification one Raoji Govind sold an oil engine to Maganbhai Motibhai on the 23rd October 1947. Three days later, i.e., on the 26th October 1947, the same oil engine was sold by Maganbhai Motibhai to Ishwarlal Lallubhai and Kalidas Mathurbhai. In

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respect of these two transactions, two prosecutions were launched, one against Raoji Govind and Maganbhai Motibhai and the second against Maganbhai Motibhai, Ishwarlal Lallubhai and Kalidas Mathurbhai. The learned Magistrate convicted the accused in each of those cases and sentenced accused No.1 in both the cases to one day's Rigorous Imprisonment and a fine of Rs.150 and the second accused in the first case and the second and third accused in the second case to one day's rigorous imprisonment and a fine of Rs.100. Against that order, the Government of the Province of Bombay have filed applications for enhancement of sentences.

According to the application memo the application is based on the ground that the lower Court had not imposed the minimum sentence provided for by ~~xxxx~~ law. This contention is based on the provisions contained in Act XXXVI of 1947. Sub-section (1) of section 2 thereof is as follows :"whoever contravenes the order made or deemed to be made under section 4 of the said Act shall be punished with imprisonment for a term which may extend to 7 years, but shall not except for reasons to be recorded in writing by less than 6 months and shall also be liable to fine." It is, therefore, argued that by reason of this amending Act, the sentence which should have been imposed upon the accused was six months unless there were reasons to be recorded in writing-for imposing a lesser sentence. In our opinion, Act No.XXXVI of 1947 cannot be applied to the transactions which formed the subject matter of these prosecutions. That Act came into force on the 25th November 1947 while the offences alleged to have been committed by the accused were committed on the 23rd October and 26th October 1947. The Act does not say that "whoever contravenes or has contravened" the order made or deemed to be made under section 4 of the Act. The section therefore is prospective in its operation and not retrospective. Therefore, when the offences were committed, they were not liable to be punished with the minimum sentence which has been made ~~impxxxible~~ imposable by Act No.XXXVI of 1947. In our opinion, therefore, the ground on which these applications have been filed for enhancement of sentences cannot be upheld.

The only question then remains is whether, under the original Act, the sentences call for enhancement. Under section 10 of the Act, whoever contravened an order made unde section 4 was liable to be punished with imprisonment for a term which may extend to three years and was also liable to pay a fine.

We do not think that this is a case in which it is necessary to enhance the sentences passed upon the accused. The accused are not professional dealers in machinery. This was not a csee of profiteering. The accused were agriculturists and the offence which they have committed is more or less of a technical nature. Moreover, the offence took place as long ago as October 1947 and the accused were convicted in February 1949. Further, the notification of the Government of Bombay was in operation only for four months and it was withdrawn on the 16th February 1048. Therefore, it was an offence to sell an oil engine contrary to the notification of the Provincial Government only for a period of four months. Under these circumstances, we do not see any occasion for enhancing the sentences passed upon the accused. We, therefore, discharge the rule in both these applications.

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Judgment recorded by The High Court in Criminal appeal No. 716 of 1949 (By Govt.) in case of Rex. Vs. Ramji Shivappa.

Mr. A.A.Mandgi for the Accused.

The Additional Government Pleader for the State.

Coram:- Chagla C.J. And Gajendragadkar J.

13th February, 1950.

Oral Judgment (Per Chagla C.J.) :-

The two Accused were charged with having committed an offence punishable under Section 302 read with Section 32 of the Indian Penal Code in that they with six others, in furtherance of the common intention all of them, intentionally caused the death of one Subrao at Karajagi.

The prosecution case was that, on the morning of the 16th of January 1947, about half an hour after sun-rise, subrao, who was an old man of 86, and his nephew, Ramu Dange, were going from the village Karajagi to the village Kangali. They were going by a footpath, and they were set upon by the Accused and the six other persons. Ramu withdrew from the scene a short distance, and his uncle Subrao was attacked with spears and axes with which these persons were armed and he was done to death. Then his body was set on fire. Ramu went to inform his relation the relations came there, and the half charred body of Subrao was removed from the fire. Then Ramu gave the information to the police Patil, which information was conveyed to the outpost havaldar and ultimately to the sub-inspector, and investigation co.- mmenced.

The two Accused were tried by thee Additional Sessions Judge, Belagaum, with the aid of assessors. The opinion of the assessors; was that the two Accused were not guilty of the offence with which they were charged. the learned Additional Sessions Judge agreed with that opinion and acquitted and discharged the Accused. It is from that order of acquittal that Government have come in appeal.

The prosecution case depended upon a large volume of evidence. The evidence consisted of Ramu himself, two other witnesses Rama and Appaya who saw the incident from close quarters, and two other witnesses Mallappa and Tatya who were at some distance and who saw the assault but who did not identify the accused till all of them came near these two witnesses, when they identified who the assailants of Subrao were these two witnesses, Mallappa and Tatya, also corroborate the fact that Rama and Appaya were on the scene of the offence. The learned Judge has disbelieved all these five witnesses, and he has given reasons why he has disbelieved them. We have carefully looked into these reasons, and, in out opinion, these reasons are not sufficient to entitle the judge to take the view that this whole body of evidence led by the prosecution should be discarded, and that these witnesses should be held to be perjured witnesses.

Turning to the most important witness, Ramu, the criticism that the learned judge has levelled against this witness is that his evidence is unnatural, and, according to the learned Judge, the unnatural aspect arises from the fact that Ramu, when he saw eight people wishing to attack both his uncle and himself, instead of running away for his life, only withdrew about 20 paces and saw the whole incidence. Now, it

should be borned in mind that where as his uncle was an old man of 86 Ramu himself was a young man of 32, and obviously the main target of the assailants was Subrao rather than Ramu. Further, even though he may have retreated only 20 paces, he was young enough, if the attack turned on him, to make a dash for it and run away to the village. Therefore, it does not seem to us that there was anything unnatural in Ramu not running away but standing at some distance from where the assault took place and watchin what was happening. A further criticism that is made against this witness is that he did not shout for help or run to the village which was nearby for assistance. Now, it is difficult to understand what purpose would have been served by Ramy shouting for help. It is true that the two witnesses Ramu and Appaya were nearby, and Mallappa and Tatya were at some distance, but Ramu and his uncle were con-- fronted by a body of about eight persons fully armed and no assistance could have been availabel which could have resulted in the attack being warded off. It is also easy to understand why Ramu did not rush to the village for assistance, because the whole incident could not have taken more than two or three minutes. Eight people fell upon an old man of 86, attacked him with spears and axes, and did him to death: that foul act does not take very long to do, and therefore not much time elapsed between the attack and the old man being done to death.

But the most important piece of evidence which supporgs Ramu is the first information wherein he has mentioned the names of all the eight assailants including those of the two accused . This Information was given to the police Patil at 8-30 A.M. about 2 or 2½ hours after the inci

The learned judge relies the importance of this strong piece of corroborative evidence, but he takes the view that, although the first information bears an endorsement from the police Patil athat it was revaived at 8-30 A.M., in fact it was reevied much later, and the police Patil, according to the learned judge, should not be believed whan he says that Ramu came and gave the vardi at 8-30 A.M. Now, the reason which led the leraned Sessions judge to come to this conclusion was thatthis information was taken by the Sanadi to the outpost station of Shankeshwar at 4 p.m., and from there it was sent to the sub-inspector at Hurkeri at 6 p.m. Now the Sandi has given evidence and has explained why there was delay in taking the first ihformation to Sankeshwar. He says that his wife was expecting a child, and he was therfore delayed and could not leave immediately with the document. It may be that this explanation of the Sandi is not satisfactory. But it is difficult to understand how the learned Judge came to the conclusion that the police Patil should not be believed when he says that he received the information from Ramu at 8-30 A.M. Strangely enough, no suggestion has been made to the police Patil that his statement that the information was received at 8-30 A.M. was not a true statement. And in the absence of any cross-examination or any suggestion, the learned Judge has taken upon himself to hold that the police Patil was not telling the truth and that it is difficult to believe that the information could have been given at 8-30 A.M. Therefore, it the fact on the record is established -- in our opinion, it is clearly established -- that a Vardi was submitted to the Police Patil at 8-30 A.M., within 2 or 2½ hours after the commission of the offence, containing the names

of all the Accused, it affords the strongest piece of evidence corroborating the testimony of Ramu. What is more important, not only the names of all the assailants are mentioned, but the whole story as deposed to by Ramu in the witness-box also set out with some particularity in this Vardi. Therefore, it is difficult to come to the conclusion that it was a later stage that Ramu made up his mind to implicate the Accused and prepared a got-up case against the Accused.

One further critism that is made against the evidence of Ramu --- and we agree there is some force in that critism is that no reference is madd by Ramu in his Vardi to the fact that the two witnesses Ramu and Appaya were present on the scene and could have witnessed the incident. It is true that according to Ramu these two witnesses were in a position to witness the incident, and one would have normlly expected Ramu to have mentioned their names in the vardi. But in our opinion, this fact by itself does not take away the effect of the Vardi given soon after the incident which Vardi mentions the names of all the assailants and which contains the full story of the incident. Ramu was the nephew of Subrao, he had witnessed a ghastly crime, and it may be that he did not realise the necessity of the importance of mentioning the names of these two witnesses. But, in this connection, it should be borne in mind that these two witnesses were examined by the police on the very next day, namely the 17th of January 1947, and as soon as the investigation commenced. Therefore, it cannot be suggested that these two witnesses were thought of at a later stage in order to prop up the prosecution case.

Now, truning to the evidence of Ramu and Appaya, as I said before, these two witnesses were standing close by and they saw the whole incident an

also identified the assailants. With regard to Rama, the learned Judge in his judgment says that the mother of this witness was in the keeping of Subrao. He also says that this witness was living with Subrao though Rama denies it. Now, with respect to the learned judge, the learned Judge seems to be under the impression that, when a suggestion is made in cross-examination to a witness, it is tantamount to the proof of that suggestion. It is hardly necessary to emphasise that any suggestion can be and is usually made in cross-examination. The wildest suggestion are put to witnesses, but it is erroneous to assume that the defence is relieved of the necessity of proving facts merely by making suggestions to witnesses in cross-examination. We find absolutely no evidence of the fact that this witness' mother was a mistress of Subrao or that this witness used to live with subrao. He has denied these fats and the learned judge has overlooked the denial and has held that these facts have been proved merely because suggestions with regard to these facts were put to the witness in cross-examination.

The leanred Judge has also held that a certain property was gifted by Subrao to this witness Rama. All that the witness admitted was that he had purchased some property from Subrao. He denied that Subrao paid the assessment of this land. the learned Judge has drawn the inference that this land was gifted by Subrao to this witness because the Record of Rights showed that on some occasions the assessment was paid 'Haste' Subrao' or 'Haste' Rama. Now, the mere fact that an assessment is paid through somebody does not establish the fact that the assessment was paid by the person whose had actually paid it to the Revenue authorities. Here again, ther is no evidence to justify the conclusion arrived a by the learned judge that this witness was partisan because he was interested in supporting the side of Subrao.

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There is one point made by the learned judge which has some force, and that is that there is some discrepancy in the evidence of Appaya as to how he and Rama happened to go together to Kanagali; According to Appaya, he and Rama had agreed to go together, and that is how they started together; but in his statement to the police he has started that he had started for Kanagali by himself and he had met Rama on the way. In our opinion, this is a minor discrepancy which cannot affect the substance of the evidence given by these two witnesses.

The learned Judge also holds that both these witnesses belonged to the party of Subrao. There again, there is very little evidence on the record which can warrant this finding. Therefore, apart from the fact, with which we have alsardy dealt, that the names of these two witnesses were not mentioned by Ramu in his Vardi to the police Patil, there does not seem to be any reason why the testimony of these two witnesses should not be believed.

The turning to the evidence of the other two witnesses, Mallappa and Tatya, as we pointed out before, although they witnessed the assault it was from some distance, and from the distance they could not identify the assailants. But then the assailants came in the direction of where these two witnesses were standing and then they identified all of them including the two Accused. Then Tatya talked to one of the assailants and asked him what had happened and he informed Tatya that he had cut to pieces Subrao and had set fire to his body. Now, the learned Judge finds it difficult to believe that the assailants would approach these witnesses with their blood-stained clothes and make an open admission of their guilt. There is no limit to human callousness, and we would not be surprised if people who are capable of cutting to pieces an old man of 86 are also capable of bragging about their misdeed.

There is also a motive suggested by the prosecution for the commission of this offence, and that if

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is that Subrao and Accused No.1 were tenants of one Annapurnabai, and Annapurnabai took away the land from Accused No. 1 and gave the whole of her land to subrao. The learned Judge is right that the prosecution have not established this fact the Record of Rights as they should have done. It was also the suggestion of the prosecution that Subrao and the Accused belonged to opposite factions in the village and this fact is admitted by the Accused themselves, because that is the line of cross-examination which they adopted in cross-examination the prosecution witnesses.

Now, Mr. Mandgi for the Accused has urged various points why we should not interfere with the order of acquittal He has emphasised the fact that Ramu did not call for held, that the witnesses on whom the prosecution are relying are not mentioned him by him, and that there was delay in presenting the Vaddi. We have dealt with these already points already, and, in our opinion, they do not substatially impair the case of the prosecution.

Then Mr. Mandgi has urged that there is not evidence that the offence took place at the time when it is suggested by the prosecution to have taken place. Mr. Mandgi says that the medical evidence was not in a position to establish when the injuries were inflicted, because the body of Subrao was half charred and the proper Post-Mortem could not be held. Of course, the medical evidence is clear that there were ante-mortem injuries and that the injuries were fatal. But Mr. Madgi urges that there is no corroboration of the prosecution witnesses that the offence took place half an hour after sunrise. If there is no medical corroboration, it is not the fault of the prosecution, because the doctor was not in a position to state exactly when the injuries were inflicted. There is no corroboration because there could not be corroboration. And if we accept the prosecution evidence --- which we do --- then there can be n

doubt that the offence took place half an hour after the sunrise, and the Vardi was sent to the police Patil at 8-30 in the morning. Mr. Mandgi says that it was difficult for Ramu to have identified the two Accused in a crowd of eight people when an assault was going on upon Subrao. But in holding that Ramu did identify the two Accused, we are not relying merely on his oral testimony but on the Vardi which he gave within a short time after the commission of the offence, wherein he has mentioned the names of all the Accused including the two Accuse with whom we are concerned in this appeal.

We must also take into consideration the subsequent conduct of the two accused, which by itself would not have been of much consequence, but which, taken with the other evidence of the prosecution, does certainly assume importance. The two Accused were absconding from the village for a long time. Accused No.1 was arrested o the 13th of July 1948, and Accused No.2 was arrested on the 3rd of August 1948. Mr. Mandgi has relied on certain medical evidence called on behalf of Accused No.2 which goes to show that Accused No.2 was suffering from tuberculosis of both the lungs when he was examined by the doctor was not certain whether the person he examined was Accused No.2, we do not see the relevant of the fact that, two months after the incident, Accused No.2 was suffering from tuberculosis. There is no evidence to show that in January 1947 Accused No.2 was not in a position to go about his busfness. As matter offact, although he was suffering from tuberculosis in March 1947, he is still very much alive.

Mr. Mandgi has also argued that the court of appeal would not ordinarily differ from the trial court when the question involves is one of appreciation of evidence . We could undoubtedly have been very reculctant

to take a different opinion from the one taken by the learned Judge or the assessors if that opinion was based solely on the demeanour of the witnesses whom he and they had the advantage of seeing. But the learned Judge has refused to accept the prosecution evidence on merits. He has considered the probabilities; he has considered whethere the evidence is natural; he has considered whether the witnesses are independent or partisan; and havinf taken all that into consideration , he has rejected the pro secution evidece,. Those are considerations which are as muc open to the court of appeal as to the trial court. We hav also considered the evidence on merits; and, in our opinion the evidence led by the prosecution is certainly such as to clearly and beyond any reasonable doubt establish the guilt of the two Accused.

We, ther efore, set aside the order of acquittal passed by the learned Sessions Judge, and convict the two Accused under Section 302, Indian Penal Code, read with section 34 of the Indian Penal code.

With regard to the sentence, as there is no evidence as to want specific part of each of the eight Accused played, we think this is not a case where the extreme penalty of the law should be inflicted. We, therefore, sentence each of the two Accused to transportation for life.

Accused to surrender to their bails.

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Judgment recorded by The High Court in Criminal appeal No. 716 of 1949 (In Circuit) in case of Rex. Vs. Ramji Shivappa.

Mr. A.A.Mandgi for the Accused.
The Additional Government Pleader for the St

Coram:- Chagla C.J. And Gajendragadkar J.

13th February, 1950.

Oral Judgment (Per Chagla C.J.) :-

The two Accused were charged with having committed an offence punishable under Section 302 read with Section 32 of the Indian Penal Code in that they with six others, in furtherance of the common intention of all of them, intentionally caused the death of one Subrao at Karajagi.

The prosecution case was that, on the morning of the 16th of January 1947, about half an hour after sun-rise, subrao, who was an old man of 86, and his nephew, Ramu Dange, were going from the village Karajagi to the village Kangali. They were going by a footpath, and they were set upon by the Accused and the six other persons. Ramu withdrew from the scene a short distance, and his uncle Subrao was attacked with spears and axes with which these persons were armed and he was done to death. Then His Body was set on fire. Ramu went to inform His relation the relations came there, and the half charred body of Subrao was removed from the fire. Then Ramu gave the information to the police Patil, which information was conveyed to the outpost havaldar and ultimately to the sub-inspector, and investigation commenced.

The two Accused were tried by the Additional Sessions Judge, Belagaum, with the aid of assessors. The opinion of the assessors was that the two Accused were not guilty of the offence with which they were charged the learned Additional Sessions Judge agreed with that opinion and acquitted and discharged the Accused. It is from that order of acquittal that Government have come in appeal.

The prosecution case depended upon a large volume of evidence. The evidence consisted of Rama himself, two other witnesses Rama and Appaya who saw the incident from close quarters, and two other witnesses Mallappa and Tatya who were at some distance and who saw the assault but who did not identify the accused till all of them came near these two witnesses, when they identified who the assailants of Subrao were these two witnesses, Mallappa and Tatya, also corroborate the fact that Rama and Appaya were on the scene of the offence. The learned Judge has disbelieved all these five witnesses, and he has given reasons why he has disbelieved them. We have carefully looked into these reasons, and, in our opinion, these reasons are not sufficient to entitle the judge to take the view that this whole body of evidence led by the prosecution should be discarded, and that these witnesses should be held to be perjured witnesses.

Turning to the most important witness, Rama, the criticism that the learned judge has levelled against this witness is that his evidence is unnatural, and, according to the learned Judge, the unnatural aspect arises from the fact that Rama, when he saw eight people wishing to attack both his uncle and himself, instead of running away for his life, only withdrew about 20 paces and saw the whole incidence. Now, it

should be borned in mind that where as his uncle was an old man of 86 Ramu himself was a young man of 32, and obviously the main target of the assailants was Subrao rather than Ramu. Further, even though he may have retreated only 20 paces, he was young enough, if the attack turned on him, to make a dash for it and run away to the village. Therefore, it does not seem to us that there was anything unnatural in Ramu not running away but standing at some distance from where the assault took place and watching what was happening. A further criticism that is made against this witness is that she he did not shout for help or run to the village which was nearby for assistance. Now, it is difficult to understand what purpose would have been served by Ramy shouting for help. It is true that the two witnesses Ramu and Appaya were nearby, and Mallappa and Tatya were at some distance, but Ramu and his uncle were confronted by a body of about eight persons fully armed and no assistance could have been availabel which could have resulted in the attack being swarded off. It is also easy to understand why Ramu did not rush to the village for assistance, because the whole incident could not have taken more than two or three minutes. Eight people fell upon an old man of 86, attacked him with spears and axes, and did him to death: that foul act does not take very long to do, and therefore not much time elapsed between the attack and the old man being done to death.

But the most important piece of evidence which supporgs Ramu is the first information, wherein he has mentioned the names of all the eight assailants including those of the two accused. This fInformation was given to the police Patil at 7-30 A.M. about 2 or 2½ hours after the incident

The learned judge relies the importance of this strong piece of corroborative evidence, but he taken the view that, although the first information bears an endorsement from the police Patil that it was revdived at 8-30 A.M., in fact it was received much later, and the police Patil, according to the learned Judge, should not be believed when he says that Ramu came and gave the Vardi at 8-30 A.M. Now, the reason which led the learned Sessions judge to come to this conclusion was thatthis information was take by the Sanadi to the outpost station of Shankeshwar at 4 p.m., and from there it was sent to the sub-inspecto at Harkeri at 6 p.m. Now the Sanadi has given evidence and has explained why there was delay in taking the first information to Sankeshwar. He says that his wife was expecting a child, and he was therfore delayed and could not leave immediately with the document. It may be that this explanation of the Sandi is not satisfactory. But it is difficult to understand how the learned Judge came to the conclusion that the polic Patil should not be believed when he says that he received the information from Ramu at 8-30 A.M. Strangely enough, no suggestion has been made to the police Patil that his statement that the information was received at 8-30 A.M. was not a true statement. And in the absence of any cross-examination or any suggestion, the learned Judge has taken upon himself to hold that the police Patil was not telling the truth and that it is difficult to believe that the information could have been given at 8-30 A.M. Therefore, it the fact on the record is established -- in our opinion, it is clearly established -- that a Vardi was submitted to the Police Patil at 8-30 A.M., within 2 or 2½ hours after the commission of the offence, containing the names

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of all the Accused, it affords the strongest piece of evidence corroborating the testimony of Ramu. What is more important, not only the names of all the assailants are mentioned, but the whole story as deposed to by Ramu in the witness-box also set out with some particularity in this Yardi. Therefore, it is difficult to come to the conclusion that it was a later stage that Ramu made up his mind to implicate the Accused and prepared a got-up case against the Accused.

One further critism that is made against the evidence of Ramu --- and we agree there is some force in that critism is that no reference is made by Ramu in his Yardi to the fact that the two witnesses Ramu and Appaya were present on the scene and could have witnessed the incident. It is true that according to Ramu these two witnesses were n a position to witness the incident, and one would have normally expected Ramu to have mentioned their names in the Yardi. But in our opinion, this fact by itself does not take away the e ef ect of the Yardi given soon after the eincident which Yardi mentions the names of all the assailants and which contains the full story of the incident. Ramu was the nephew of Subraya, he had witnessed a ghastly crime, and it may be that he did not realise the necessity of the importance of mentioning the names of these two witnesses. But, in this connection, it should be borne in mind that these two witnes es were examined by the police on the very next day, namely the 17th of January 1947, and as soon as the investigation commenced. Therefore, it ix cannot be suggested that these two witnesses were thought of at a later stage in order to prop up the prosecution case.

Now, trun ng to the evidence of Ramu and Appaya, as I said before, these two witnesses were standing close by and they saw the whole incident and

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also identified the assailants. With regard to Rama, the learned Judge in his judgment says that the mother of this witness was in the keeping of Subrao. He also says that this witness was living with Subrao though Rama denies it. Now, with respect to the learned judge, the learned Judge seems to be under the impression that, when a suggestion is made in cross-examination to a witness, it is tantamount to the proof of that suggestion. It is hardly necessary to emphasise that any suggestion can be and is usually made in cross-examination. The wildest suggestion are put to witnesses, but it is erroneous to assume that the defence is relieved of the necessity of proving facts merely by making suggestions to witnesses in cross-examination. We find absolutely no evidence of the fact that this witness' mother was a mistress of Subrao or that this Witness used to live with subrao. He has denied these fats and the learned judge has overlooked the denial and has held that these facts have been proved merely because suggestions with regard to these facts were put to the Witness in cross-examinatio

The leanred Judge has also held that a certain property was gifted by Subrao to this Witness Rama. All that the witness admitted was that he had purchased some property from Subrao. He denied that Subrao paid the assessment of this land, the learned Judge has drawn the inference that this land was gifted by Subr to this witness because the Record of Rights showed that on some occasions the assessment was paid 'Haste' Subrao' or'Haste' Rama. Now, the mere fact that an assessment is paid through somebody does not establish the fact that the assessment was paid by the person whose had actually paid it to the Revenue authorities. Here again, there is no evidence to justify the conclusion arrived at by the learned judge that this witness was partisan because he was interested in supporting the side of Subrao.

There is one point made by the learned judge which has some force, and that is that there is some discrepancy in the evidence of Appaya as to how he and Rama happened to go together to Kanagali; According to Appaya, he and Rama had agreed to go together, and that is how they started together; but in his statement to the police he has started that he had started for Kanagali by himself and he had met Rama on the way. In our opinion, this is a minor discrepancy which cannot affect the substance of the evidence given by these two witnesses.

The learned Judge also holds that both these witnesses belonged to the party of Subrao. There again, there is very little evidence on the record which can warrant this finding. Therefore, apart from the fact, with which we have alsardy dealt, that the names of these two witnesses were not mentioned by Rama in his Yardi to the police Patil, there does not seem to be any reason why the testimony of these two witnesses should not be believed.

The turning to the evidence of the other two witnesses, Mallappa and Tatya, as we pointed out before, although they witnessed the assault it was from some distance, and from the distance they could not identify the assailants. But then the assailants came in the direction of where these two witnesses were standing and then they identified all of them including the two Accused. Then Tatya talked to one of the assailants and asked him what had happened and he informed Tatya that he had cut to pieces Subrao and had set fire to his body. Now, the learned Judge finds it difficult to believe that the assailants would approach these witnesses with their blood-stained clothes and make an open admission of their guilt. There is no limit to human callousness, and we would not be surprised if people who are capable of cutting to pieces an old man of 86 are also capable of bragging about their misdeed.

There is also a motive suggested by the prosecution for the commission of this offence, and that if

is that Subrao and Accused Nos.4 were relatives of one Annapurnabai, and Annapurnabai took away the land from Accused No. 1 and gave the whole of her land to subrao. The learned Judge is right that the prosecution have not established this fact the Record of Rights as they should have done. It was also the suggestion of the prosecution that Subrao and the Accused belonged to opposite factions in the village and this fact is admitted by the Accused themselves, because that is the line of cross-examination which they adopted in cross-examination the prosecution witnesses.

Now, Mr. Mandgi for the Accused has urged various points why we should not interfere with the order of acquittal. He has emphasised the fact that Ramu did not call for help, that the witnesses on whom the prosecution are relying are not mentioned him by him, and that there was delay in presenting the Yaddi. We have dealt with these already points already, and, in our opinion, they do not substantially impair the case of the prosecution.

Then Mr. Mandgi has urged that there is not evidence that the offence took place at the time when it is suggested by the prosecution to have taken place. Mr. Mandgi says that the medical evidence was not in a position to establish when the injuries were inflicted, because the body of Subrao was half charred and the proper Post-Mortem could not be held. Of course, the medical evidence is clear that there were ante-mortem injuries and that the injuries were fatal. But Mr. Madgi urges that there is no corroboration of the prosecution witnesses that the offence took place half an hour after sunrise. If there is no medical corroboration, it is not the fault of the prosecution, because the doctor was not in a position to state exactly when the injuries were inflicted. There is no corroboration because there could not be corroboration. And if we accept the prosecution evidence --- which we do --- then there can be no

doubt that the offence took place half an hour after the sunrise, and the Yardi was sent to the police Patil at 8-30 in the morning. Mr. Mandgi says that it was difficult for Ramu to have identified the two Accused in a crowd of eight people when an assault was going on upon Subrao. But in holding that Ramu did identify the two Accused, we are not relying merely on his oral testimony but on the Yardi which he gave within a short time after the commission of the offence, wherein he has mentioned the names of all the Accused including the two Accuse with whom we are concerned in this appeal.

We must also take into consideration the subsequent conduct of the two accused, which by itself would not have been of much consequence, but which, taken with the other evidence of the prosecution, does certainly assume importance. The two Accused were absconding from the village for a long time. Accused No.1 was arrested on the 13th of July 1948, and Accused No.2 was arrested on the 3rd of August 1948. Mr. Mandgi has relied on certain medical evidence called on behalf of Accused No.2 which goes to show that Accused No.2 was suffering from tuberculosis of both the lungs when the he was examined by the doctor was not certain whether the person he examined was Accused No.2, we do not see the relevant of the fact that, two months after the incident, Acc---- No.2 was suffering from tuberculosis. There is no evidence to show that in January 1947 Accused No.2 wa not in a position to go about his business. As a offact, although he was suffering from tuberculosis in March 1947, he is still very much alive.

Mr. Maddgi has also argued that the court of appeal would not ordinarily differ from the trial court when the question involves is one of appreciation of evidence . We could undoubtedly have been very reculctal

to take a different opinion from the one taken by the learned Judge or the assessors if that opinion was based solely on the demeanour of the eitnesses whome he and they had the advantage of seeing. But the learned Judge has refused to accept the prosecution evidence on merits. He has considered the probabilities; he has considered whethere the evidence is natural; he has considered whether the witnesses are independent or partisan; and havinf taken all that into consideration , he has rejected the prosecution evidece,. Those are considerations which are as much open to the court of appeal as to the trial court. We have also considered the evidence on merits, and, in our opinion, the evidence led by the prosecution is certainly such as to clearly and beyond any reasonable doubt establish the guilt of the two Accused.

We, ther efore, set aside the order of acquittal passed by the learned Sessions Judge, and convic the two Accused under Section 302, Indian Penal Code, read with section 34 of the Indian Penal Code.

With regard to the sentence, as there is no evidence as to want specific part of each of the eight Accuse played, we think this is not a case where the extreme penalty of the law should be inflicted. We, therefore, sentence each of the two Accused to transportation for life.

Accused to surrender to their bails.

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Mezzanine Floor
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Date of issue
8-5-56